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FINANCIAL INSTITUTIONS ADVISORY & FINANCIAL REGULATORY GROUP NEWSLETTER

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Financial Regulatory Developments Focus

In this newsletter, we provide a snapshot of the principal US, European and global financial regulatory developments of interest to banks, investment firms, broker-dealers, market infrastructure providers, asset managers and corporates.

Click here if you wish to access our Financial Regulatory Developments website.

In This Issue (please click on any title to go directly to the corresponding discussion):

Bank Prudential Regulation & Regulatory Capital

US Comptroller of the Currency Discusses the Condition of the US Federal Banking System

On September 15, 2016, Comptroller of the Currency Thomas J. Curry addressed how the US federal banking system has progressed since the Great Recession and the 2008 financial crisis, the strength of US banks today and the need for continued vigilance to manage risks. Among other things, the Comptroller discussed leverage ratios and their role as an additional line of defense, or backstop, to the risk-based capital measures. Curry criticized the proposals of some to "water down" the ratios by manipulating what is included or excluded from consideration and stressed the need for clear definitions that accurately and transparently capture the leverage of regulated banks. Curry argued that "weakening the ratio through special exclusions only undermines our original intent and weakens the protection against excessive leverage." He further noted that while some wish to exclude certain assets from measures of leverage on the grounds that it could affect certain business lines' profitability, "the essence of assessing a bank's leverage is about comparing its equity to its assets, and carving out various assets would cut against the very meaning of leverage."

Comptroller Curry's full remarks are available at: http://www.occ.gov/news-issuances/speeches/2016/pub-speech-2016-113.pdf.

US Office of the Comptroller of the Currency Releases Bank Supervision Operating Plan for Fiscal Year 2017

On September 14, 2016, the US Office of the Comptroller of the Currency released its bank supervision operating plan for fiscal year (FY) 2017. The plan sets forth the foundation for policy initiatives and for supervisory strategies applicable to individual banks. OCC staff members will use this plan to guide their supervisory priorities, planning and resource allocations.

Of note, the agency indicated that it will focus on Bank Secrecy Act/anti-money laundering compliance management in 2017. Additional supervisory strategies for FY 2017 will focus on: (i) commercial and retail loan underwriting; (ii) business model sustainability and viability; (iii) operational resiliency; and (iv) change management processes to address new regulatory requirements.

The OCC will provide periodic updates about supervisory priorities through the Semiannual Risk Perspective in the spring and fall of 2017, and with a mid-cycle operating plan status report in the third quarter of FY 2017.

The OCC's Fiscal Year 2017 Operating Plan is available at: http://www.occ.gov/news-issuances/news-releases/2016/nr-occ-2016-112a.pdf.

US Office of the Comptroller of the Currency Proposes Framework for Receiverships for Uninsured Federally Chartered National Banks

On September 13, 2016, the OCC issued a proposed rule setting forth a framework for placing uninsured national banks regulated by the OCC into receivership. While the National Bank Act and Federal Deposit Insurance Act specify the Federal Deposit Insurance Corporation as receiver for insured banks and savings associations, the law grants the Comptroller of the Currency broad authority to choose a receiver for uninsured national banks. The proposal would not apply to federal savings associations, all of which are insured, or to uninsured US branch offices of foreign banks.

The proposed rule describes: (i) the appointment of a receiver and required federal notice; (ii) the process for submitting claims against the receivership; (iii) the order of priorities for payment of administrative expenses and claims; (iv) the powers and duties of the receiver; (v) the payment of dividends on claims; (vi) the sources of funds for payments and claims; and (vii) the status of fiduciary and custodial assets and accounts.

While the OCC has not appointed a receiver for an uninsured national bank in many years, the agency believes that clarifying the framework, process and authority promotes the orderly resolution of such institutions if required and contributes to the broader stability of the federal banking system.

All uninsured national banks are currently trust banks. However, the OCC noted that it retains discretion to grant new charters for uninsured banks, and the OCC specifically stated that an uninsured federal bank charter may be an appropriate entity for delivering banking procedures in a new way in light of technological innovations in financial services.

The deadline to submit comments on the proposed rule is November 14, 2016.

The proposed rule is available at: http://www.occ.gov/news-issuances/news-releases/2016/nr-occ-2016-110a.pdf.

US Comptroller of the Currency Discusses Marketplace Lending

On September 13, 2016, as part of the inaugural Marketplace Lending Policy Summit 2016, US Comptroller of the Currency Thomas J. Curry discussed marketplace lending's risks and associated policy questions. Of note, Comptroller Curry addressed the OCC's work around responsible innovation and feedback it has received to date on potentially granting federal banking charters to fintech firms. Curry noted that if the OCC does decide to grant limited-purpose charters in this area, the institutions who receive the charters will be held to the same strict standards of safety, soundness and fairness that other federally chartered institutions must meet.

Comptroller Curry's full remarks are available at: http://www.occ.gov/news-issuances/speeches/2016/pub-speech-2016-111.pdf.

US Federal Banking Agencies Issue Joint Report on Banking Activities and Investments

On September 8, 2016, the US Board of Governors of the Federal Reserve System, the US Federal Deposit Insurance Corporation and the OCC jointly issued, pursuant to a requirement under Section 620 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, a study on the scope of permissible activities and investments engaged in by banking entities, and the associated risks of those activities. The banking entities covered in the study include insured depository institutions and any company that controls an insured depository institution or is treated as a bank holding company.

The report recommends changes to mitigate risks associated with banking activities, including (i) repealing the authority of financial holding companies to engage in merchant banking and commodities activities, (ii) reviewing certain activities to determine whether changes in regulations are needed and (iii) clarifying certain prudential rules and regulations. If enacted, the Federal Reserve Board's recommendations relating to merchant banking and commodities activities would significantly restrict the permissible activities of FHCs established under the Gramm-Leach-Bliley Act in 1999. The Federal Reserve Board also recommended the repeal of exemptions available to owners of industrial loan companies and grandfathered savings and loans.

The text of the report is available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160908a1.pdf.

US Board of Governors of the Federal Reserve System Sets Framework for Setting the Countercyclical Capital Buffer

On September 8, 2016, the Federal Reserve Board issued a policy statement setting forth the framework for setting the Countercyclical Capital Buffer for private-sector credit exposures in the United States. The CCyB is a macroprudential tool that is intended to assist banking organizations in absorbing shocks associated with fluctuations in credit conditions. As a general matter, the CCyB applies to large internationally active banking organizations that are subject to the advanced approaches capital rules (i.e., those with more than $250 billion in assets or $10 billion in on-balance-sheet foreign exposures), and to any depository institution subsidiary of such banking organizations. The policy statement describes the types of financial system vulnerabilities and other factors that the Federal Reserve Board may take into account as it evaluates settings for the buffer, which may include: leverage in the nonfinancial and financial sectors, maturity and liquidity transformation in the financial sector and asset valuation pressures. However, the range of indicators and models that may be considered will likely change over time. Once activated, the CCyB imposes heightened capital requirements on such covered institutions, which heightened requirements may be removed or reduced by the Federal Reserve Board upon determination that financial conditions that led to the activation of the CCyB have abated or lessened. In addition, the policy statement notes that the Federal Reserve Board will provide notice and seek comment from the public on the proposed level of the CCyB as part of making any final determination to change the CCyB.

The text of the Federal Reserve Board policy statement is available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160908b1.pdf.

US Board of Governors of the Federal Reserve System Extends Deadline for FR Y-9C

On September 8, 2016, the US Board of Governors of the Federal Reserve System adopted revisions to the FR Y-9C reporting form, a standardized financial statement for consolidated bank holding companies. The Federal Reserve Board revised the FR Y-9C to, among other things, delete existing data items, increase existing thresholds for certain data items, and clarify certain instructional items. The changes were originally proposed to take effect on March 31, 2016. In response to comments, the Federal Reserve Board is generally delaying the effective date for implementation for certain changes to September 30, 2016, while others will become effective March 31, 2017.

The text of the adopting release is available at: https://www.gpo.gov/fdsys/pkg/FR-2016-09-08/pdf/2016-21524.pdf.

US Office of the Comptroller of the Currency Proposes Rule Prohibiting Investments in Industrial or Commercial Metals

On September 8, 2016, as it indicated it would do in the Joint Report on Banking Activities and Investments, the OCC issued a proposed rule that would prohibit national banks and federal savings associations from dealing and investing in industrial or commercial metal. If finalized, the prohibition would cover metal, including alloy, in a physical form primarily suited to industrial or commercial use (including, for example: copper cathodes, aluminum T-bars and gold jewelry). The proposal states that such metals do not constitute "exchange, coin, and bullion" under 12 USC 24(Seventh), nor would buying or selling such metals for the purpose of dealing or investing in that metal be part of or incidental to the business of banking. By operation of various federal laws, the prohibition would also apply to FDIC-insured state banks and to US branches and agencies of foreign banks. Comments must be submitted 60 days from the date of the proposed rule's publication in the Federal Register.

The text of the OCC proposed rule is available at: http://www.occ.gov/news-issuances/news-releases/2016/nr-occ-2016-108a.pdf.

US Federal Deposit Insurance Corporation Publishes New Issue of Supervisory Insights

On August 22, 2016, the US FDIC released the Summer 2016 issue of its publication, *Supervisory Insights*. The magazine contains two original articles and the regular "Regulatory and Supervisory Roundup" which provides summaries of recently released regulations and supervisory guidance. An article entitled "*De Novo* Banks: Economic Trends and Supervisory Framework," lays out trends the FDIC staff has observed in *de novo* formation, the FDIC application review process and steps the FDIC takes to supervise and support new banking institutions. Another article entitled, "Matters Requiring Board Attention (MRBA)" provides a survey of trends among issues appearing in the MRBA section of examination reports. The article notes several specific trends: first, examinations resulting in MRBAs have declined since 2011, second, there have been relative increases in credit concentration risk management and liquidity management-related MRBAs, and third, corporate governance and IT practices are additional areas of increasing concern.

The Summer 2016 issue of Supervisory Insights is available at: https://www.fdic.gov/regulations/examinations/supervisory/insights/sisum16/SI_Summer16.pdf.

White House Council of Economic Advisers Releases Report on the Impact of Financial Reform on the Performance of Community Banks

On August 10, 2016, the White House Council of Economic Advisers released a report analyzing the impact of regulations issued pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act on community banks, defined generally as banks with assets less than $10 billion. The report disputed claims that increased regulations have negatively impacted smaller-size institutions, noting areas where community banks have remained strong since the Dodd-Frank Act. The report also describes certain long-standing structural challenges that precede the Dodd-Frank Act which community banks have continued to face, and noted the "importance of implementing Dodd-Frank in a way that allows community banks to compete on a level playing field."

In response, Republicans on the US House of Representatives Financial Services Committee published a blog post countering the assertions in the White House report, and posted statements from various community bankers and other small financial services operators commenting on the negative ways in which Dodd-Frank Act reforms have impacted their respective institutions.

The text of the White House report is available at: https://www.whitehouse.gov/sites/default/files/page/files/20160810_cea_community_banks.pdf and the HFSC blog post is available at: http://financialservices.house.gov/blog/?postid=400962.

US Board of Governors of the Federal Reserve System Proposes Expansion of Chief Financial Officer Attestation to Intermediate Holding Companies

On July 28, 2016, the Federal Reserve Board published a proposal to extend for three years, with revision, the Capital Assessments and Stress Testing information collection applicable to bank holding companies with total consolidated assets of $50 billion or more and US intermediate holding companies established by foreign banking organizations. The Federal Reserve Board proposed revising the FR Y-14A, Q and M schedules to expand the chief financial officer attestation reporting requirement applicable to US BHCs subject to the Large Institution Supervision Coordinating Committee (LISCC) framework to US IHC respondents on a phased-in basis beginning with reports as of December 31, 2017. The CFO-attestation requirement was finalized for US BHCs earlier this year and implementation is required on a phased-in basis for reports as of December 31, 2016.

The proposal also provides for revisions to the FR Y-14A that include data on the supplementary leverage ratio as well as to include information on material operational risks included in loss projections, operational risk scenarios and updated documentation requirements to align with SR Letter 15-18. Comments were due by September 26, 2016.

The Federal Reserve Board proposal is available at: https://www.gpo.gov/fdsys/pkg/FR-2016-07-28/pdf/2016-17876.pdf.

US Federal Reserve Board Extends Comment Period for Proposed Rule Detailing Conceptual Frameworks for Capital Standards

On July 25, 2016, the US Federal Reserve Board extended until September 16, 2016, the comment period for the advanced notice of proposed rulemaking detailing conceptual frameworks for capital standards that could apply to systemically important insurance companies and to insurance companies that own a bank or thrift. The Federal Reserve Board proposal presents one approach, known as the "consolidated approach," that would apply to systemically important insurance companies and a second approach, referred to as the "building block approach," for the supervised insurance companies that own a bank or thrift. The Federal Reserve Board extended the comment period, originally set for August 17, 2016, to allow interested persons more time to analyze the issues and prepare their comments.

The proposed rule is available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160725a1.pdf.

Senators Urge Regulators to Reconsider Regulations Applicable to Regional Banks

On July 18, 2016, Senators Tim Kaine (D-Va) (the Democratic vice-presidential nominee), Mark R. Warner (D-Va.), Gary C. Peters (D-Mich.) and Robert P. Casey (D-Pa.) wrote a letter to the heads of the US Federal Reserve Board, the FDIC and the OCC, requesting an exemption for certain large regional banks from the requirements of the liquidity coverage ratio and the advanced approaches risk-based capital rules. In their letter, the senators argue that it would be unfair for large regional banks to be subjected to the same LCR and capital rules requirements as are applied to riskier, more complex, systemically important banks.

Currently, because LCR reporting requirements are based on an asset threshold test, some large regional banks are subject to heightened LCR requirements, which requires, among other things, certain daily reporting of liquidity levels. Large regional banks may also, by virtue of size or foreign exposure, be subject to the "advanced approaches" capital requirements that dictate capital reserves a bank must hold to cover potential losses. The senators argue that regional banks should be exempted from complying with the burdens of both the LCR requirement and the Advanced Approaches requirements because they do not share the "same risk profile or complexity" as systemically important banks. The Senators also stated generally that the regulatory regime should move away from reliance on an internal models approach on the theory that such reliance obscures a bank's financial status.

The full text of the letter is available at: http://online.wsj.com/public/resources/documents/WarnerLetter07-19-2016.pdf.

Managing Director of the International Monetary Fund Expresses Concern about Breakdown in Correspondent Banking

On July 18, 2016, the Managing Director of the International Monetary Fund, Christine Lagarde, gave a speech before the Federal Reserve Bank of New York about the struggles facing the global financial market's smaller players in the aftermath of the financial crisis. Director Lagarde stated that due to heightened post-financial crisis regulations and anti-money laundering rules, many large global banks were prompted to reevaluate their correspondent banking models with smaller countries, and chose to reduce cross-border banking services offered to those entities considered too risky or unprofitable. In connection with those trends, Director Lagarde expressed concern that the global consequences of large banks withdrawing from vulnerable smaller countries, if left unaddressed, could become systemic and disruptive. She urged regulators to collect data and facilitate discussions with banks on this issue. Finally, Director Lagarde emphasized that "a strong and open international financial system is key to restore momentum in the global economy," and that global banks must avoid "knee-jerk" reactions to increased regulatory costs.

The text of Director Lagarde's speech is available at: http://www.imf.org/en/news/articles/2016/07/15/13/45/sp071816-relations-in-banking-making-it-work-for-everyone.

US Federal Deposit Insurance Corporation Chairman Testifies on *De Novo* Banks and Industrial Loan Companies

On July 14, 2016, Chairman of the US FDIC Martin J. Gruenberg testified before the Committee on Oversight and Government Reform of the US House of Representatives regarding *de novo* banks and industrial loan companies. During his testimony, he provided an overview of recent banking industry performance and condition, discussed trends in *de novo* bank and ILC formation, and steps the FDIC is taking to support the creation of *de novo* banks. Chairman Gruenberg testified that there have been few *de novo* banks formed in recent years, noting that since January 2011, the FDIC has received only ten applications for deposit insurance for *de novo* institutions and no applications for new ILCs. Of these ten applications, three were approved, five were withdrawn and two are still in process. Gruenberg noted that although community bank earnings have recovered in recent years, low interest rates and narrow net interest margins have kept bank profitability ratios (return on assets and return on equity) well below pre-crisis levels, making it relatively unattractive to start new banks. Gruenberg also noted that the FDIC is continuing to monitor developments with respect to the formation of new banking institutions, and recently announced a number of initiatives to support the efforts of viable organizing groups in creating new institutions. For example, the FDIC has begun a "Questions and Answers" series to help applicants better develop their proposals and has presented an overview of the deposit insurance application process to a conference of state bank supervisory agencies. Moreover, on April 6, 2016, the FDIC reduced the period of enhanced supervisory monitoring of newly insured depository institutions from seven years to three years.

Chairman Gruenberg's testimony is available at: https://www.fdic.gov/news/news/speeches/spjul1316.html

US Federal Reserve Board Releases Results of Comprehensive Capital Analysis and Review

On June 29, 2016, the US Federal Reserve Board announced that it has not objected to the capital plans of 30 of the 33 bank holding companies participating in the Comprehensive Capital Analysis and Review (CCAR). The Federal Reserve Board objected to two firms' plans and while one other firm's plan was not objected to, it is being required to address certain weaknesses and resubmit its plan by the end of 2016.

CCAR evaluates the capital planning processes and capital adequacy of the largest US-based bank holding companies (including US BHC subsidiaries of non-US banking organizations), including the firms' planned capital actions such as dividend payments and share buybacks and issuances. When considering a firm's capital plan, the Federal Reserve Board analyzes, and may object to a capital plan based on, quantitative factors (e.g., a firm's projected capital ratios under a hypothetical scenario of severe economic and financial market stress) and qualitative factors (e.g., the strength of the firm's capital planning process, which incorporate the risk management, internal controls and governance practices that support the process). If the Federal Reserve Board objects to a capital plan, a firm may not make any capital distribution unless expressly authorized by the Federal Reserve Board.

Since the first round of stress tests led by the Federal Reserve Board in 2009, the common equity capital ratio, which compares high-quality capital to risk-weighted assets, of the 33 bank holding companies in the 2016 CCAR has more than doubled from 5.5 percent in the first quarter of 2009 to 12.2 percent in the first quarter of 2016. This reflects an increase of more than $700 billion in common equity capital to a total of $1.2 trillion during the same period.

The CCAR 2016 assessment framework and results are available at:
http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160629a1.pdf.

US Federal Reserve Board Releases Results of Supervisory Bank Stress Tests

On June 23, 2016, the US Federal Reserve Board released the results of supervisory stress tests for 33 participating BHCs, representing more than 80 percent of US domestic banking assets. According to the Federal Reserve Board, the largest US bank holding companies "continue to build their capital levels and improve their credit quality, strengthening their ability to lend to households and businesses during a severe recession."

Under the most severe hypothetical scenario, the results project that loan losses at the 33 participating firms would total $385 billion during the nine quarters tested. This "severely adverse" scenario features a severe global recession with the domestic unemployment rate rising five percentage points, accompanied by a heightened period of financial stress and negative yields for short-term US Treasury securities. In addition to results under the severely adverse hypothetical scenario, the Federal Reserve Board also released results from the "adverse" scenario, which features a moderate recession and mild deflation in the United States. In this scenario, the average common equity tier 1 capital ratio of the 33 firms fell from an actual 12.3 percent in the fourth quarter of 2015 to a projected minimum level of 10.5 percent in the first quarter of 2018.

The Dodd-Frank Act supervisory stress tests are one component of the Federal Reserve Board's analysis during the CCAR, which is an annual exercise to evaluate the capital planning processes and capital adequacy of large bank holding companies. This is the sixth round of stress tests led by the Federal Reserve Board since 2009 and the fourth round required by the Dodd-Frank Act.

The supervisory stress test methodology and results are available at:
http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160623a1.pdf.

US Federal Deposit Insurance Corporation Proposes Rule to Amend References to Credit Ratings for Permissible Activities of Foreign Banking Organizations

On June 21, 2016, the FDIC issued a notice of proposed rulemaking to remove and modify references to credit ratings with respect to permissible activities for certain foreign banking organizations, consistent with section 939A of the Dodd-Frank Act and the FDIC's authority under section 5(c) of the Federal Deposit Insurance Act. Specifically, the proposed rule amends subparts A and B of the FDIC's international banking regulations (12 C.F.R. Part 347). The proposed rule would delete references in Subpart A to nationally recognized statistical rating organization credit ratings in the definition of "investment grade" and replace such references with alternative standards for determining the creditworthiness of securities and other financial instruments. Subpart B would be amended in a similar fashion to eliminate references to credit ratings in respect of the eligibility criteria for assets that foreign banks may pledge in order to satisfy the FDIC's asset pledge requirement. Comments on the proposed rulemaking were due by August 29, 2016.

The FDIC notice of proposed rulemaking is available at: https://www.fdic.gov/news/board/2016/2016-06-21_notice_sum_f_fr.pdf.

EU Final Draft Technical Standards on the Exchange of Information Between Regulators Regarding Qualify Holdings

On September 22, 2016, the European Banking Authority published final draft Implementing Technical Standards on the common procedures, forms and templates for the consultation process between the relevant national regulators when carrying out the prudential assessment relating to proposed acquisitions of qualifying holdings in credit institutions. The Capital Requirements Directive requires regulators to fully consult with each other when carrying out the assessment of a proposed acquirer of qualifying holdings. The final draft ITS supplements this requirement by setting out the requirements for the designation of contact points by regulators, as well as a timeframe and process for submitting the consultation notice and for providing the response. The final draft ITS provide templates for the response from the regulator from whom information has been requested. It also outlines language requirements and means of communication, as well as how mutual feedback would be carried out. The EBA has made certain amendments to the version of the ITS that it consulted on previously to take into account the final draft ITS prepared on a similar topic under the Markets in Financial Instruments Directive II, which was published by the European Securities and Markets Authority in March 2015. Those amendments seek to align the requirements across sectors. The final draft ITS must be adopted the Commission before it can enter into force.

The final draft ITS is available at: http://www.eba.europa.eu/documents/10180/1586782/Final+draft+ITS+on+the+procedures+and+forms+%28EBA-ITS-2016-05%29.pdf.

EU Legislation on Indices and Recognized Exchanges Under the Capital Requirements Regulation

On September 13, 2016, ITS listing the main indices and recognized exchanges for the use of eligible collateral in accordance with the Capital Requirements Regulation was published in the Official Journal of the European Union.

The CRR states that equities or convertible bonds included in a main index may be used by institutions as eligible collateral for credit risk mitigation purposes. One of the eligibility criteria for collateral is that it should be sufficiently liquid. To be considered as main indices for the purposes of the CRR, equity indices should consist mainly of equities that can reasonably be expected to be realizable when an institution needs to liquidate them. Equity indices listed include STOXX Asia/Pacific 600, TSX60, Hang Seng Mainland 100 Index (China), FTSE Europe Index, S&P BMI France, Nikkei 300 and the OMXS60. The convertible bond indices listed as main indices are Exane ECI-Europe, Jefferies JACI Global and Thomson Reuters Global Convertible.

The final draft ITS submitted by ESMA has been amended by the Commission to include Hang Seng Composite Index and the Russell 3000 Index. Those indices have been included, despite ESMA's opinion that they should not be, to avoid the exclusion of any indices that have satisfied the eligibility criteria.

The CRR states that debt securities issued by certain institutions which do not have a credit assessment by an external credit assessment institution may be used as eligible collateral only where they fulfill a number of conditions, one of them being that they are listed on a recognized exchange. The CRR also provides that the treatment of instruments and commodities for the calculation of risk-weighted exposures for counterparty risk for items in the trading book must be the same as equities that are not on a main index but listed on a recognized exchange. Recognized exchanges included in the ITS are Powernext Derivatives, CME Europe Limited, ICE Futures Europe, the London Metal Exchange, Eurex Deutschland, ICE Endex Derivatives, Euronext Paris, Securitised Derivatives Market and the London Stock Exchange.

The Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1646&from=EN.

European Central Bank Draft Guidance on Non-Performing Loans

On September 12, 2016, the European Central Bank published proposed draft Guidance on non-performing loans. The proposed Guidance addresses the main aspects of strategy, governance and operations for resolving NPLs. Once finalized, the Guidance will apply to all Eurozone Significant Institutions supervised by the ECB in the Single Supervisory Mechanism as well as their international subsidiaries. Eurozone banks will be expected to apply the Guidance proportionately with those banks that have a high level of NPLs taking greater actions. The ECB Banking Supervision emphasizes that an NPL strategy should outline the bank's approach and objectives regarding the effective management and ultimate reduction of NPL stocks in a clear, credible and feasible manner for each relevant portfolio. The ECB also published the results of a survey which it undertook with eight national supervisory authorities. The survey assesses the legal and supervisory practices of eight of the Eurozone countries. The ECB considers that some of those countries should revise and strengthen the legal framework on NPLs. Responses to the consultation are due by November 15, 2016.

The draft Guidance and related information is available at: https://www.bankingsupervision.europa.eu/legalframework/publiccons/html/npl.en.html and the draft Guidance is available at: https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/npl/npl_guidance.en.pdf.

EU Legislation Amending Indicators Used in the Methodology for the Identification of Global Systemically Important Institutions

On September 8, 2016, a Commission Delegated Regulation amending the Regulatory Technical Standards specifying the methodology for the identification by national regulators of global systemically important institutions and the definition of subcategories of GSIIs was published in the Official Journal of the European Union. The RTS specify quantifiable indicators forming the five categories to be used when measuring the systemic significance of a bank. The RTS is based on international standards developed by the Basel Committee on Banking Supervision to assess global systemically important banks and on the higher loss absorbency requirement. This methodology is regularly updated. The Amending Regulation updates the reporting templates and reporting instructions for the data collection for 2016 as well as the current values of the indicators that are to be determined. The Amending Regulation entered into force on September 9, 2016.

The Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.240.01.0001.01.ENG&toc=OJ:L:2016:240:TOC and the original RTS is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1474881909671&uri=CELEX:32014R1222.

European Banking Authority Reports on Core Funding Ratio

On September 8, 2016, the EBA published a report analyzing the core funding ratio across the EU. The report comes in response to a call for advice from the European Commission to explore the possibilities of the core funding ratio as a potential alternative metric for the assessment of EU banks' funding risk, taking into account proportionality.

The EBA reports that overall there appears to be a lack of correlation in terms of outcomes and conclusions between the core funding ratio and the Net Stable Funding Ratio for the whole sample, in particular for smaller banks. The EBA comments that this is mainly because CFR assessment of funding risk only considers the liabilities side of banks irrespective of the stable funding needed. Conversely, the EBA noted that the NSFR considers both sides of the balance sheet and therefore provides a full funding risk assessment. The EBA's opinion is that the NSFR is the most accurate measurement for assessing banks' funding risk and that the CFR is not a suitable replacement.

The report is available at: http://www.eba.europa.eu/documents/10180/1568410/EBA+Report+on+Core+Funding+Ratio+%28EBA-2016-Op-15%29.

European Banking Authority Amends Technical Standards on Benchmarking of Internal Approaches Under CRD IV

On August 4, 2016, the EBA published an amended version of its ITS on benchmarking of internal approaches under the CRD. The ITS have been amended to assist regulators in their 2017 benchmarking assessment of internal approaches for credit risk and market risk. The 2016 exercise covered credit risk for so-called high-default portfolios (small and medium enterprises and retail) and market risk portfolios. The 2017 exercise will focus on low-default portfolios. The EBA noted that it intends to update the ITS annually to ensure the quality of future benchmarking exercises. The amended ITS have been published as a package of documents with consolidated instructions, templates and annexes. The amended ITS have been submitted to the European Commission but have not yet been adopted.

The amended ITS is available at: http://www.eba.europa.eu/documents/10180/1539314/EBA-ITS-2016-04+(Final+draft+ITS+amending+Regulation+on+Benchmarking).pdf and the amended draft benchmarking package is available at:
http://www.eba.europa.eu/documents/10180/1542632/Benchmarking+package+for+2017+exercise+%28end+2016+data%29.zip.

Results of EU Stress Test Published

On July 29, 2016, the EBA published the results of the EU-wide stress test. The stress test covered 51 EEA banks and assessed the resilience of the EEA banking sector to adverse financial conditions. Unlike the stress tests conducted in 2011 and 2014, the 2016 stress test did not aim to identify possible capital shortfalls. The EBA considers that after five years of continuous capital raising in the EU banking sector, the crisis type of stress test appears to be less relevant. It is intended instead that supervisors will use the 2016 results to assess banks' forward looking capital planning. The results of the stress test will be used by national regulators in their Supervisory Review Process to assess each bank's capital planning going forward.

The stress test documentation is available at: http://www.eba.europa.eu/risk-analysis-and-data/eu-wide-stress-testing/2016/results.

European Banking Authority Publishes Further Criteria on Preferential Treatment for Calculating the Liquidity Coverage Requirement for Intra-Group Liquidity Flows

On July 27, 2016, the EBA published final draft RTS on the criteria for the application of preferential treatment in cross-border intragroup credit or liquidity lines, or within an institutional protection scheme. The CRR permits regulators to grant preferential treatment for transactions within a group or an institutional protection scheme by applying higher inflow rates (in the case of the liquidity receiver) or lower outflow rates (in the case of the liquidity provider) for calculating the LCR for intra-group liquidity flows. Where transactions within a group or an institutional protection scheme constitute cross-border positions, preferential treatment is conditional upon compliance with additional objective criteria specified in the LCR Delegated Act. The CRR mandates the EBA to develop draft RTS to specify additional objective criteria.

The first criterion of the LCR Delegated Act requires the liquidity provider and receiver to present a low liquidity risk profile. The draft RTS further requires a liquidity provider and receiver to have complied with the required level of LCR specified in the LCR Delegated Act and other applicable liquidity-related supervisory requirements or measures specified in the CRD on an on-going basis for at least 12 months prior to the authorization of preferential treatment. Additionally, the liquidity provider and receiver's liquidity positions must pose a low level of risk according to the latest supervisory review and evaluation processed under the applicable provisions of CRD.

The second criterion requires that there are legally binding agreements and commitments between group entities regarding the credit or liquidity line. The draft RTS requires the legally binding agreements to satisfy certain conditions, including that the credit or liquidity line is a committed line which is legally and practically available at any time for the duration of the facility on a cross-border basis, and that the currency denomination of the committed credit or liquidity line is consistent with the distribution by currency of the net liquidity outflows of the liquidity receiver that are unrelated to the line.

The third criterion stipulates that the liquidity risk profile of the liquidity receiver has been adequately taken into account in the liquidity risk management of the liquidity provider.

The draft RTS further specifies that this condition will be satisfied if a number of other requirements are met, including that the liquidity provider monitors and oversees the liquidity receiver on a daily basis, and that the effects of the preferential outflow or inflow rate are fully considered and integrated into the contingency funding plans of the liquidity provider and the liquidity receiver.

The final draft RTS is available at: http://www.eba.europa.eu/documents/10180/1533013/EBA-RTS-2016-04+%28Final+draft+RTS+on+criteria+for+a+preferential+treatment+in+cross-border+intragroup+financial+support+under+LCR%29.pdf.

European Banking Authority Consults on Connected Clients Under the Capital Requirements Regulation

On July 26, 2016, the EBA published a consultation paper proposing an updated version of the Guidelines on the implementation of the large exposures regime that was issued by the Joint Committee of European Banking Supervisors on December 11, 2009. The large exposures regime has since been amended by the CRR and complemented by European Commission and EBA Guidelines. In light of the CRR amendments, the EBA has reviewed and updated the 2009 CEBS Guidelines and presented the results of the review in the consultation paper.

The draft Guidelines focus on the issue of connected clients and take into account developments in the area of shadow banking and large exposures, both at EU and international level. The draft Guidelines focus on control relationships and economic dependencies, which lead to the formation of groups of connected clients. Institutions should make use of their clients' consolidated financial statements when assessing connections. Guidance is provided on the use of an alternative approach under the CRR for assessing the existence of groups of connected clients of entities directly controlled by, or directly interconnected with, central governments (or, where applicable, regional or local governments). The draft Guidelines also develop the non-exhaustive list of situations of economic dependency (previously included in the CEBS Guidelines) and clarify situations where control and economic dependency are interlinked or can create one group of connected clients rather than two separate groups of connected clients. Lastly, the draft Guidelines set out the control and management procedures to identify connected clients. The EBA noted that the draft Guidelines are consistent with the supervisory framework for measuring and controlling large exposures issued by the Basel Committee in April 2014. Responses to the consultation paper are due by October 26, 2016.

The consultation paper is available at: http://www.eba.europa.eu/documents/10180/1531170/EBA-CP-2016-09+CP+on+Guidelines+on+Connected+Clients.pdf.

European Banking Authority Proposes Guidelines for Implementation of an Expected Credit Loss Accounting Model

On July 26, 2016, the EBA published draft Guidelines on bank's credit risk management practices and accounting for expected losses. IFRS 9 Financial Instruments will replace IAS 39 Financial Instruments: Recognition and Measurement for the accounting periods beginning on or after January 1, 2018. IFRS 9 requires the measurement of impairment loss allowances to be based on an expected credit loss accounting model rather than on an incurred loss accounting model. Many EU banks use the IFRS standards and because the use of an ECL accounting model involves some discretion in it application, the EBA is proposing that bank's use the Guidelines when implementing and applying IFRS 9. The proposed Guidelines should be read in conjunction with the relevant provisions of the CRR and CRD. The consultation closes on October 26, 2016. The EBA intends to finalize the Guidelines in Q4 2016 or Q1 2017. The finalized Guidelines will need to be implemented by January 1, 2018.

The consultation paper is available at: http://www.eba.europa.eu/documents/10180/1532063/EBA-CP-2016-10+%28CP+on+Guidelines+on+Accounting+for+Expected+Credit%29.pdf.

European Banking Authority Final Report on Communications Under the Audit Directive

On July 26, 2016, the EBA published its final report on guidelines for communication between regulators supervising credit institutions and statutory auditors and audit firms carrying out the statutory audit of credit institutions. The Audit Regulation requires that effective dialogue must be established between regulators supervising credit institutions on the one hand and the statutory auditors and audit firms carrying out the audit of those firms on the other. The EBA's Guidelines include an underlying general framework that should underpin communication between regulators and auditors at all times. The Guidelines include seven principles and detailed guidance relating to the main elements of effective communication. The seven principles address: (i) the scope and relevance of information shared; (ii) requests by regulators for information from auditors; (iii) the sharing of information with auditors by regulators; (iv) methods of communication and communication channels; (v) the identity, competence and knowledge of participants in the communication between regulators and auditors collectively; (vi) the frequency of information-sharing between regulators and auditors; and (vii) communications between regulators and auditors collectively (such as a group of auditors, or a professional body representing auditors). The Guidelines will be transposed into the official languages of the EU and will apply from March 31, 2017.

The Final Report is available at: http://www.eba.europa.eu/documents/10180/1531117/EBA-GL-2016-05+%28Final+report+on+GL+on+communication+between+competent+authorities%29.pdf/d095b68c-17a1-40b3-9188-5f9facc23886.

European Banking Authority Decision on Quality of Certain Unsolicited Credit Assessments of External Credit Assessment Institutions

On July 22, 2016, a Decision of the EBA on unsolicited credit assessments was published in the Official Journal of the European Union. The EBA decided that unsolicited credit assessments of certain External Credit Assessment Institutions (ECAIs) did not differ from their solicited credit assessments. An ECAI is a credit rating agency that has been registered or certified under the EU CRA Regulation or a central bank issuing credit ratings which are exempt from the application of the CRA Regulation. The CRR permits the use of unsolicited credit assessments of an ECAI for the determination of risk weights to be assigned to assets and off-balance sheet items for the purpose of the calculation of own funds requirements. The use of such assessment is subject to confirmation by the EBA that the unsolicited credit assessment does not differ in quality from solicited credit assessments of that same ECAI. The EBA is required to refuse or revoke this confirmation, in particular if the ECAI has used an unsolicited credit assessment to put pressure on the rated entity to place an order for a credit assessment or other services. The EBA has decided that 22 ECAIs' unsolicited credit assessments do not differ from their solicited credit assessments for the purpose of calculating own funds requirements, including Fitch Ratings, Moody's Investors Service and Standard & Poor's Ratings Service. The decision entered into force on August 11, 2016.

The EBA Decision is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2016.266.01.0004.01.ENG&toc=OJ:C:2016:266:TOC&_sm_au_=iVVQHqKkVHqmNDV3

Report on Asset Quality in the EU Banking Sector

On July 22, 2016, the EBA published a report on the recent dynamics, cross-country dispersion and drivers of non-performing exposures in the EU banking sector. The report covers a review of 166 EU banks from September 2014 to March 2016. The EBA notes that there is a high disparity between jurisdictions, suggesting that the average NPL ratio is up to three times higher in the EU than in other jurisdictions. The report provides an overview of asset quality across jurisdictions and analyzes the riskiness of counterparties in different countries and the structural characteristics of local markets that can affect credit quality, provisioning policies and recovery of distressed assets.

The EBA highlights three areas where it considers improvements would reduce the impediments to resolution of NPLs. Firstly, the EBA recommends that more support for supervisory work is needed, including a harmonized application of the definition of default (for which the EBA already has work in progress) and supervisory guidance on dealing with NPLs, collateral valuation and effective arrears management and NPL resolution governance inside banks. Secondly, the EBA notes that there are structural issues impeding the resolutions of NPLs. By improving the judicial process and reducing court backlogs combined with the use of out-of-court restructuring, the marketability of NPLs could be improved. The third area of improvement is the liquidity, transparency and efficiency of secondary markets in loans that are used to facilitate the disposal of NPLs. The EBA also notes that the improvement and revival of the EU debt securitization market could increase the options for banks to deal with their NPLs.

The report is available at:
http://www.eba.europa.eu/documents/10180/1360107/EBA+Report+on+NPLs.pdf?_sm_au_=iVVBNr2WM4k2msJw.

European Banking Authority Launches Data Collection Exercise for the Review of the Prudential Framework for Investment Firms

On July 15, 2016, the EBA launched a data collection exercise to support its response to the European Commission's Call for Advice on a new prudential framework for investment firms subject to MiFID. In December 2014, the Commission sought technical advice from the EBA and ESMA on whether the current prudential framework applicable to MiFID investment firms under CRD and CRR was appropriate in terms of risk sensitivity, proportionality and complexity. In response, the EBA concluded that the regime was not appropriate for the risks that MiFID investment firms are exposed to and made recommendations.

The first recommendation proposed that there should be three different classes of investment firms: (i) systemic "bank-like" firms which should remain within the scope of the CRR; (ii) a middle category for a majority of firms that are not systemic but do pose risks and should therefore be subject to a less-complex prudential regime; and (iii) small firms which are not interconnected and should only be subject to a very simple regime, if appropriate, to cater for winding-down. The second recommendation suggested that work would need to be done to the design of the regimes applicable to the different classes of investment firms, including collecting data and policy development. The third recommendation was to extend the waiver for commodity trading firms from the large exposures and capital adequacy provisions in the CRR until December 31, 2020. The EBA also highlighted in its response that, because investment firms have different business models, risk profiles and pay structures to banks, the remuneration requirements under CRD and CRR may be challenging for investment firms to implement. The Commission asked the EBA in June this year to provide detailed technical advice on these recommendations to inform the Commission's decision on whether to amend the prudential framework applicable to MiFID investment firms, including the application of the remuneration requirements.

To assist the EBA in preparing its technical advice for the Commission, the EBA published templates and instructions to collect information from MiFID investment firms and firms that conduct investment activities or services that are subject to the Undertakings in Collective Investments in Transferable Securities Directive and the Alternative Investment Funds Management Directive. Firms are asked to complete the templates and return them to their national regulator by October 7, 2016.

The Call for Advice is available at: https://www.eba.europa.eu/documents/10180/1513482/CfA+Investment+firms.pdf/ee3bb612-5124-47e8-8bba-8ec380afbb75 and the EBA data collection instructions and templates are available at: http://www.eba.europa.eu/-/eba-launches-data-collection-to-support-the-new-prudential-framework-for-investment-firms.

European Central Bank Guidance on Recognition of Institution Protection Schemes

On July 12, 2016, the ECB published its Guide on the approach for the recognition of institution protection schemes for prudential purposes. The CRR defines an IPS as a contractual or statutory liability arrangement which protects its member institutions and ensures that they have the liquidity and solvency needed to avoid, where necessary, bankruptcy. Certain waivers or derogations of capital requirements are available for IPS member institutions under CRR. In particular, CRR provides that the ECB may, subject to certain exceptions, allow credit institutions to apply a 0% risk weight to exposures to other counterparties which are members of the same IPS with the exception of exposures giving rise to Common Equity Tier 1, Additional Tier 1 and

Tier 2 items. The ECB directly supervises the largest Eurozone banks for prudential purposes and overseas the prudential supervision by national regulators of the smaller Eurozone banks. The ECB's Guide sets out how it intends to assess compliance of an IPS and its members with the requirements set out in the CRR to grant such a waiver.

The Guide is available at: https://www.bankingsupervision.europa.eu/ecb/pub/pdf/institutional_protection_guide.en.pdf and the feedback statement is available at: https://www.bankingsupervision.europa.eu/legalframework/publiccons/pdf/institutional/feedback_statement.en.pdf.

European Banking Authority Reports on Level of Asset Encumbrance

On July 4, 2016, the EBA published its second report analyzing the level of asset encumbrance across EU banks. The analysis aims to assist EU supervisors in assessing how banks manage funding stress as well as the impact that switching from unsecured to secured funding might have on banks in conditions of stress. The report is based on data covering time from December 2014 to December 2015, further to a requirement under the CRR for banks to report levels of repurchase agreements, securities lending and all forms of asset encumbrance to national regulators and for the EBA to prepare annual reports based on that data. The analysis shows that there has been no significant increase in the overall weighted average encumbrance ratio over the last year. The report noted that high levels of asset encumbrance in some countries (notably Denmark and Sweden) were driven by large covered bond markets or by high central bank funding in countries affected by the sovereign debt crisis (e.g. Greece) or by high levels of repo financing and collateral requirements for OTC derivatives (e.g. UK and Belgium).

The report is available at: http://www.eba.europa.eu/documents/10180/1360107/EBA+Report+on+Asset+Encumbrance+-+June+2016.pdf.

EU Extension of Exemption for Commodity Dealers Finalized

On June 29, 2016, an EU Regulation extending the exemption for commodity dealers from large exposures requirements and own fund requirements was published in the Official Journal of the European Union. The exemption has been extended from December 31, 2017 to December 31, 2020 or until a revised framework for the application of the CRR to commodity dealers and investment firms comes into force, whichever is the earlier. The European Council announced in March this year that it had agreed to the extension. The original deadline was set on the basis that the European Commission would have conducted a review of the prudential regime applicable to commodity dealers and to investment firms by the end of 2015 and, if appropriate, proposed a legislative regime adapted for the risk profile of commodity dealers and investment firms. The Commissions' review is still in progress and the amending Regulation states that finalization of the review and adoption of any new legislation will only be concluded after December 31, 2017. The extension will avoid the need for relevant firms to temporarily comply with the full CRR requirements in 2018 before being subsequently moved to a tailored regime within two to three years. The extension became effective on July 19, 2016.

The amending Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.171.01.0153.01.ENG&toc=OJ:L:2016:171:TOC.

Proposed EU Guidelines on Implementing the Revised Pillar 3 Framework

On June 29, 2016, the EBA launched a consultation proposing Guidelines on compliance with the regulatory disclosure requirements in the CRR. The EBA aims to ensure harmonized and timely implementation of the Basel III Pillar 3 requirements that were released in January 2015. The proposed Guidelines will introduce specific guidance and formats for disclosure, using tables and templates. Responses to the consultation were due by September 29, 2016. The Guidelines are set to apply for the year-end 2017 disclosures. However, the EBA recommends that Globally Systemically Important Institutions implement a limited subset of disclosures relating to risk-weighted assets and capital requirements for the year-end 2016 disclosures.

The consultation paper is available at: http://www.eba.europa.eu/documents/10180/1507285/EBA-CP-2016-07+%28CP+on+GL+on+disclosure+requirements%29.pdf.

European Central Bank Publishes Supervisory Statement on Governance and Risk Appetite Frameworks for Euro Banks

On June 21, 2016, the Banking Supervision arm of the ECB published a SSM supervisory statement on governance and risk appetite. In 2015, a thematic review was undertaken of all significant firms in the euro area to assess their management bodies and their risk appetite frameworks. The supervisory statement reports on the findings from that review, identifies good practices and sets out supervisory expectations for a bank's board and risk appetite framework, aiming to guide banks on their implementation of international best practices.

The supervisory statement is available at: https://www.bankingsupervision.europa.eu/ecb/pub/pdf/ssm_supervisory_statement_on_governance_and_risk_appetite_201606.en.pdf.

UK Financial Policy Committee Maintains Countercyclical Buffer Rate

On September 22, 2016, the Financial Policy Committee of the Bank of England released a statement following its meeting on September 20, 2016. The FPC considers that the current outlook for financial stability in the UK remains challenging following the outcome of the referendum in June for the UK to leave the EU. The FPC has reaffirmed that it expects to maintain a countercyclical buffer rate of 0% until at least June 2017 unless any material changes warrant an amendment. The Prudential Regulation Authority's expectation is that banks should not increase dividends and other distributions as a result of the CCyB being maintained at 0%.

The statement is available at: http://www.bankofengland.co.uk/publications/Pages/news/2016/033.aspx.

UK Prudential Regulator Publishes Statement on the Leverage Ratio

On August 4, 2016, the PRA published a statement inviting firms to apply for a temporary modification of the application of the Leverage Ratio, Public Disclosure and Reporting Leverage Ratio parts of the PRA Rulebook to them. The modification is available to firms that are currently subject to the UK leverage ratio framework. The statement follows a recommendation in July from the FPC of the Bank of England on the composition of the total exposure measure for the purposes of the leverage ratio, which stated that when applying its rules on the leverage ratio, the PRA should consider allowing firms to exclude from the calculation of the total exposure measure those assets constituting claims on central banks where they are matched by deposits accepted by the firm that are denominated in the same currency and of identical or longer maturity.

The PRA has implemented the recommendation and has published a direction for modification by consent, which sets out the relevant rule modifications in relation to the definition of the total exposure measure of the leverage ratio framework. The revised definition of the total exposure measure under the rule modification will flow through to firms' obligations regarding the minimum leverage ratio requirement, the countercyclical leverage ratio buffer and the additional leverage ratio buffer. The modification does not change the reporting and disclosure requirements under the CRR and UK leverage ratio regime.

Once a firm applies for the rule modification, it is expected that the direction for modification by consent will be automatically issued to allow for the modified rules to apply to that firm.

The statement is available at: http://www.bankofengland.co.uk/pra/Documents/publications/reports/prastatement0816.pdf and the direction for modification by consent is available at: http://www.bankofengland.co.uk/pra/Documents/authorisations/waiverscrr/modbyconlrdir.pdf.

UK Prudential Regulation Authority Consults on Proposed Approach to Implementation of the Systemic Risk Buffer

On July 29, 2016, the PRA published a consultation paper on its proposed approach to the implementation of the systemic risk buffer. The consultation paper is relevant to ring-fenced bodies under the Financial Services and Markets Act 2000 and large building societies that hold more than £25 billion in deposits (where one or more of the accountholders is a small business) and shares (excluding deferred shares). These are jointly referred to as "SRB institutions." The UK Independent Commission on Banking recommended that UK systemically important SRB institutions be held to a higher capital standard. In addition to these recommendations, the UK legislation implementing the systemic risk buffer requires that the PRA apply the FPC framework as of January 1, 2019. The PRA's proposals outline the scope of the framework, the capital implications of the SRB and the PRA's approach to applying the SRB.

The PRA is proposing that: (i) it will, in the exercise of sound supervisory judgment, only deviate from the SRB rates derived from the FPC framework in exceptional cases; (ii) for building societies in scope of the framework, the applicable basis of the framework will be the group consolidated basis for building societies that are the parents of consolidation groups and the individual basis for all others; (iii) the initial SRB rates will be set and announced by the PRA in early 2019 and will apply three months after being set; and (iv) following the application of the initial SRB rates, rates will be set and announced annually and will apply in the second year following the calendar year in which they were set. Responses to the proposals are due by October 28, 2016.

The consultation paper is available at: http://www.bankofengland.co.uk/pra/Documents/publications/cp/2016/cp2716.pdf and the FPC framework and associated consultation paper are available at: http://www.bankofengland.co.uk/financialstability/Pages/fpc/systemicrisk.aspx.

UK's Financial Policy Committee Responds to Brexit Vote by Eliminating the Countercyclical Buffer for Bank Capital

On July 5, 2016, the Bank of England published its latest Financial Stability Report in which the Bank's FPC sets out the key risks to the UK's financial system and weighs them against the resilience of the system. In March 2016, the FPC had identified areas through which there could be increased risk to the UK's financial stability as a result of the vote by the UK public to leave the EU. Such areas include financing of the UK's large current account deficit, the commercial real estate market, the high level of household indebtedness, limited growth in the global economy and vulnerabilities in the functioning of the financial markets. The FPC states that there is evidence that some of these risks have begun to crystallize and that the current outlook for financial stability is challenging. The FPC is monitoring closely the risks of, amongst other things, further deterioration in investor appetite for UK assets, adjustments in commercial real estate markets tightening credit conditions and reduced and fragile liquidity in core financial markets.

To support the supply of credit and in support of market functioning, the FPC has reduced the UK CCyB rate from 0.5% to 0% of banks' UK exposures with immediate effect. This rate is expected to remain in effect until June 2017, and will reduce regulatory capital buffers by £5.7 billion. The FPC continues to monitor the risks closely.

The report is available at: http://www.bankofengland.co.uk/publications/Pages/fsr/2016/jul.aspx.

You may like to view our client publications and webinar materials on the impact of Brexit, available here.

Basel Committee on Banking Supervision Progress Report on Basel III Implementation

On August 29, 2016, the Basel Committee published a report to the G20 leaders, providing an update on implementation of the Basel III regulatory reforms since the Basel Committee's last progress report in November 2015. The Basel Committee concluded that the Basel III capital and liquidity standards have generally been transposed into domestic regulations within the time frame set by the Committee. Since the last report, key components such as the risk-based capital standards and the LCR have now been enforced by all member jurisdictions, while the G-SIB framework has been enforced by all member jurisdictions that are home jurisdictions to G-SIBs. The Basel Committee highlighted the ongoing efforts of member jurisdictions to adopt other Basel III standards such as the leverage ratio and the NSFR.

However, some jurisdictions have noted challenges in meeting the implementation deadlines for standards such as the margin requirements for non-centrally cleared derivatives (September 2016) and the revised Pillar 3 framework (the end of 2016). The Basel Committee noted that the implications of the Basel III standards are that banks have continued to build capital and liquidity buffers since last year's report. The Basel Committee concluded that despite progress being made, challenges still remain with regard to the timely regulatory adoption of Basel standards in some jurisdictions, and that this is important due to the cross-border nature of banking activities.

The report is available at: http://www.bis.org/bcbs/publ/d377.pdf.

Basel Committee on Banking Supervision Revises Its Securitization Framework

On July 11, 2016, the Basel Committee published an amended Securitization Framework to include alternative regulatory capital treatment for simple, transparent and comparable (STC) securitizations. The Securitization Framework, which was initially published on December 11, 2014, forms part of Basel III. The amendments to the Securitization Framework provide for lower capital charges to apply to STC Securitizations, and include criteria that should be applied to differentiate STC securitizations from other securitizations. The new capital treatment for STC securitizations should be read in conjunction with the criteria for identifying STC securitizations (published by the Basel Committee and the International Organization of Securities Commissions in July 2015). The Securitization Framework, as amended, is due to come into effect in January 2018.

The updated Securitization Framework is available at: http://www.bis.org/bcbs/publ/d374.pdf.

Bank Structural Reform

US Board of Governors of the Federal Reserve System Formalizes One-Year Conformance Period Extension for Certain Volcker Rule Legacy Fund Investments

On July 6, 2016, the US Federal Reserve Board extended until July 21, 2017, the conformance period for banking entities to divest ownership in certain legacy investment funds and terminate relationships with funds that are prohibited under section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, commonly known as the Volcker Rule. This order formalizes the Federal Reserve Board's December 2014 announcement that it would make this extension to provide for orderly divestitures and to prevent market disruptions.

This extension would permit banking entities additional time to divest or conform only "legacy covered fund" investments, such as prohibited investments in hedge funds and private equity funds that were made prior to December 31, 2013. This extension does not apply to investments in and relationships with a covered fund made on or after December 31, 2013, or to proprietary trading activities; banking entities were required to conform those activities to the final rule by July 21, 2015.

This is the final of the three one-year extensions that the Federal Reserve Board is authorized to grant. Additionally, upon the application of a banking entity, the Federal Reserve Board is permitted under section 619 to provide up to an additional five years to conform investments in certain illiquid funds, where the banking entity had a contractual commitment to invest in the fund as of May 1, 2010. The Federal Reserve Board expects to provide more information in the near term as to how it will address such applications.

The Federal Reserve Board order approving the extension is available at:
http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160707a1.pdf.

UK Prudential Regulator Publishes Policy Statement on Implementation of Ring-Fencing

On July 7, 2016, the UK PRA published a Policy Statement on the implementation of ring-fencing, covering prudential requirements, intragroup arrangements and the use of financial market infrastructures. The Policy Statement summarizes feedback received to the consultation paper published in October 2015. The PRA states that it does not consider that the responses received to the consultation paper have necessitated any significant changes to its proposals.

The Policy Statement is relevant to banking groups that will be required to ring-fence their core activities upon introduction of the ring-fencing regime. This includes both those with "core" deposits in excess of £25 billion and those groups with plans for growth that mean they will exceed the threshold by the implementation date of January 1, 2019.

Appendices to the Policy Statement include the final rules and supervisory statement implementing the proposals consulted on in the previous consultation paper and the near-final rules that were published in May of last year. The Policy Statement will come into effect on January 1, 2019.

The Policy Statement is available at: http://www.bankofengland.co.uk/pra/Documents/publications/ps/2016/ps2016.pdf, the final rules are available at: http://www.bankofengland.co.uk/pra/Documents/publications/ps/2016/ps2016app1.pdf and the Supervisory Statement is available at: http://www.bankofengland.co.uk/pra/Documents/publications/ss/2016/ss816.pdf.

UK Prudential Regulator Consults on Reporting and Prudential Requirements for Ring-Fenced Banks

On July 7, 2016, the UK PRA published a consultation paper on aspects of its policy to implement the ring-fencing requirements for banks. The consultation covers reporting, prudential and recovery and resolution requirements. The proposals are relevant to all firms that are required to ring-fence their core banking activities before the implementation date of January 1, 2019 (which are firms, broadly speaking, with at least £25 billion of core deposits) and to growing firms that expect to meet this threshold by 2019. UK banking groups that have more than £25 billion of core deposits will need to ring-fence the entity/ies that accept deposits - called ring-fenced bodies, by transferring other business lines to different legal vehicles or undertaking other business separations.

The PRA proposes to establish reporting requirements on a sub-consolidated basis when an RFB sub-group is formed, by extending all non-CRR reporting requirements that currently apply on a consolidated basis to banking groups affected by ring-fencing to an RFB sub-group and requiring RFBs to submit certain non-CRR reporting returns on a sub-consolidated basis, requiring RFBs to report on a sub-group’s intragroup exposures, related collateral and funding transactions.

The PRA is also proposing that RFBs report on their use of the exceptions available which will allow them to undertake certain activities that are otherwise excluded and prohibited under the ring-fencing laws, as well as submitting data to show how they have complied with the ring-fencing rules (to the extent that that data is not already reported under other rules).

The PRA proposes that a bank be required, if not in a group, to notify the PRA within 30 days of it becoming aware, or having information which reasonably suggests, that its total core deposits have increased to over £25 billion or have decreased to less than or equal to £25 billion. Additionally, this will apply if the bank is in a group where the sum of core deposits of all relevant group members have increased to over £25 billion or has decreased to less than or equal to £25 billion.

The proposals include rules that would prohibit a UK parent of a ring-fenced body from using double leverage to fund its investment in a RFB or other entities in an RFB sub-group. The PRA is also proposing new rules that will ensure that it complies with certain recommendations of the FPC. These recommendations are that the PRA should, where systemic buffers apply at different levels of consolidation, ensure that there is sufficient capital within the consolidated group, and distributed appropriately across it, to address both global systemic risk and domestic systemic risks. Other proposals include requiring an RFB sub-group to include an assessment of the impact of the failure of group entities that are not part of the sub-group in its reverse stress testing, requiring groups with an RFB to include recovery options for the RFB sub-group in its recovery plan and extending the PRA’s policy on the continuity of services and facilities to include access to FMIs. Responses to the consultation are due by October 7, 2016.

The consultation paper is available at: http://www.bankofengland.co.uk/pra/Documents/publications/cp/2016/cp2516.pdf.

Compensation

European Banking Authority Publishes Translations of the Final Guidelines on Sound Remuneration Policies

On June 28, 2016, the EBA published translations of its final Guidelines on sound remuneration policies. The final Guidelines are applicable to banks and investment firms and cover all staff with particular aspects focusing on staff whose professional activities have a material impact on a firm's risk profile. The Guidelines will apply from January 1, 2017 and will repeal the existing guidelines produced by the Committee of European Banking Supervisors in December 2010. The Guidelines set out detailed requirements for remuneration policies, the related governance arrangements and processes for implementing remuneration policies.

The Final Guidelines are available at: http://www.eba.europa.eu/regulation-and-policy/remuneration/guidelines-on-sound-remuneration-policies.

Consumer Protection

US Consumer Financial Protection Bureau Considers Proposal to Overhaul Debt Collection Market

On July 28, 2016, the US Consumer Financial Protection Bureau outlined proposals under consideration that would overhaul the debt collection market by capping collector contact attempts and by helping to ensure that companies collect the correct debt. Pursuant to the proposals being considered, debt collectors would be required to have more and better information about the debt before they collect. As they are collecting, debt collection companies would be required to limit communications, clearly disclose debt details and make it easier to dispute the debt. When responding to disputes, collectors would be prohibited from continuing to pursue debt without sufficient evidence. These requirements and restrictions would follow the debt if it were sold or transferred.

The outline of the proposals under consideration is available at: http://files.consumerfinance.gov/f/documents/20160727_cfpb_Outline_of_proposals.pdf.

Corporate Governance

US Federal Banking Agencies Release Frequently Asked Questions on Standards for Assessing Diversity Policies and Practices of Regulated Institutions

On August 2, 2016, the US Federal Reserve Board, the FDIC and the OCC issued frequently asked questions (FAQs) regarding the process for how financial institutions they regulate may begin to submit self-assessments of their diversity policies and practices starting with year-end 2015. Section 342 of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires the federal financial regulatory agencies to develop standards for assessing the diversity policies and practices of its regulated institutions, which became effective on June 10, 2015. The standards provide a framework for regulated institutions to assess and establish or strengthen their diversity policies and practices. Financial institutions are strongly encouraged to disclose on their websites their diversity policies and practices, as well as information related to their self-assessments, to maximize transparency, and to provide their policies, practices and self-assessment information to their primary federal financial regulator.

The FAQs are available at: https://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160802b1.pdf.

UK Prudential Regulator Reminds CRR Firms About Management Body Diversity

On August 12, 2016, the PRA published an open letter to all firms subject to the CRR reminding firms of the requirement in the PRA Rulebook to have in place a policy promoting diversity on the management body. The letter follows a report by the EBA on Benchmarking Diversity Practices published on July 8, 2016. The PRA cited the report which highlighted that, of UK firms surveyed, only 15% had a policy to promote diversity on their management body. The PRA is also interested in how firms have promoted diversity among Senior Managers.

The letter is available at: http://www.bankofengland.co.uk/pra/Documents/about/diversityletter120816.pdf, the General Organizational Requirements are available at: http://www.prarulebook.co.uk/rulebook/Content/Chapter/214142/26-07-2016 and the EBA Report is available at: https://www.eba.europa.eu/documents/10180/1360107/EBA-Op-2016-10+%28Report+on+the+benchmarking+of+diversity+practices%29.pdf.

Financial Stability Board Reports on Progress on its Workplan to Reduce Misconduct Risk

On September 1, 2016, the Financial Stability Board published a second progress report on its workplan to reduce misconduct risk. The workplan was first agreed in May 2015 and the FSB published its first progress report in November 2015. The workplan involves: (i) reviewing the effectiveness of reforms to compensation tools in reducing the risk of misconduct; (ii) examining whether the global standards of conduct in the fixed income, commodities and currency (FICC) markets need to be improved; and (iii) reforming the major financial benchmarks.

The FSB's second progress report sets out the progress made to date as well as the expected dates for finalization of some of the work. By the end of 2016, IOSCO will publish final guidance for benchmark administrators on the content of the statements of compliance that administrators will be conducting a follow-up review of WM/Reuters 4 pm London Closing Spot Rate. The report also noted current reforms to the key IBOR benchmarks with a final report to be released in the course of 2017. Other items that are in the pipeline include publishing recommendations on the application of regulatory compensation tools to reduce misconduct risk by the end of 2017 and a wide-ranging FX Global Code for the wholesale foreign exchange market is expected to be finalized by May 2017.

The progress report is available at: http://www.fsb.org/wp-content/uploads/Measures-to-reduce-misconduct-risk-Second-Progress-Report.pdf.

Report on Implementation of Global Corporate Governance Principles

On August 23, 2016, the OECD published a progress report on the implementation of the G20/OECD Principles of Corporate Governance. The Principles were endorsed by G20 Leaders at their summit in Antalya on November 15-16, 2015 and are one of the Key Standards for Sound Financial Systems adopted by the FSB. The progress report provides an update on the main developments that have helped jurisdictions to implement the Principles, including translations of the Principles into languages other than the official languages of the OECD. It also discusses the review and update of the methodology used by the OECD to assess the implementation of the Principles, as well as containing information on the FSB peer review of the implementation of the relevant Principles. The review will assess how FSB member jurisdictions have implemented the Principles for publicly listed financial institutions, such as banks, insurers, asset managers and financial holding companies. The final version of the Methodology is expected to be adopted in November 2016. The OECD intends to continue with its thematic peer reviews and the next peer review is expected to launch in the first half of 2017.

The progress report is available at: http://www.oecd.org/corporate/G20-OECD-Progress-Report-on-Corporate-Governance-Principles.pdf.

Financial Stability Board Launches Thematic Peer Review on Corporate Governance

On August 8, 2016, the FSB launched its thematic peer review regarding the implementation of the G20/Organization for Economic Co-Operation and Development Principles of Corporate Governance. These Principles have been designated as one of the FSB's key standards for sound financial systems. The Principles cover governance frameworks, disclosure and transparency, rights and equitable treatment of shareholders, key ownership functions and responsibilities. The objective of the peer review, as outlined in the terms of reference, is to understand and assess how FSB member jurisdictions have applied the principles to publicly-listed regulated financial institutions (banks, insurers, asset managers and financial holding companies).

The FSB is seeking feedback on, for example, the design of corporate governance frameworks and whether they promote transparent and fair markets, the protection of shareholder rights and how corporate governance structures can facilitate equitable treatment for all shareholders. The review is limited to those Principles which apply to listed regulated financial institutions, but it is hoped that it may allow for a more in-depth analysis of particular topics which are relevant for the FSB's broader remit. The feedback is due by September 9, 2016 with a final report expected to be published in early 2017.

The FSB terms of reference are available at: http://www.fsb.org/wp-content/uploads/Corporate-governance-peer-review-request-for-public-feedback.pdf and the G20/OECD Principles of Corporate Governance are available at: http://www.oecd.org/daf/ca/Corporate-Governance-Principles-ENG.pdf.

Credit Ratings

US Federal Financial Institutions Examination Council Issues Revisions to Information Security Booklet

On September 9, 2016, the US Federal Financial Institutions Examination Council issued a revised Information Security booklet, which is part of the FFIEC's IT Examination Handbook. The Information Security booklet summarizes the factors necessary to an effective information security program. The booklet sets forth updated guidelines for examiners evaluating the adequacy of information security programs of financial institutions and describes the following aspects of effective information security operations, which include (i) effective threat identification, assessment and monitoring and (ii) incident identification assessment and response. In addition, the booklet discusses assurance reports (addressing IT system design and operation) and testing of information security programs as methods to assess and achieve the effectiveness of such programs.

The text of the FFIEC's IT Handbook is available at: http://ithandbook.ffiec.gov/.

Cyber Security

New York State Department of Financial Services Proposes Cybersecurity Regulations

On September 13, 2016, the New York State Department of Financial Services proposed regulations requiring banks, insurance companies and other NYDFS-regulated institutions to promptly adopt a cybersecurity program and setting forth certain minimum standards with respect to such program. As part of the establishment of a cybersecurity program, each covered entity would be required to, among other things, adopt a written cybersecurity policy, designate a chief information security officer responsible for implementing, overseeing and enforcing its new program and policy and have policies and procedures designed to ensure the security of information systems and nonpublic information accessible to, or held by, third-parties. Institutions would also be required to comply with additional requirements in order to protect the confidentiality, integrity and availability of information systems. The proposed regulations would also require senior management of covered entities to file an annual certification confirming compliance with the regulations, beginning in January 2018.

The NYDFS notes that while these regulatory minimum standards are warranted, it is not the intention that such standards be overly prescriptive so that cybersecurity programs can match the relevant risks and keep pace with technological advances. The proposed regulations are subject to a 45-day notice and public comment period before their final issuance.

The proposed regulations are available at: http://www.dfs.ny.gov/legal/regulations/proposed/rp500t.pdf.

US National Institute of Standards and Technology Calls for Information on Cybersecurity in the Digital Economy

On August 10, 2016, the US NIST issued a request for information regarding current and future cybersecurity initiatives in the digital economy in connection with its directive to support the Commission on Enhancing National Cybersecurity. The Commission will ultimately make recommendations on actions that can be taken to strengthen cybersecurity in both the public and private sectors. NIST is seeking information on current trends, progress being made, short-term initiatives and perceived long-term challenges in respect of several topics relating to cybersecurity as the Commission formulates recommendations intended to "increase the protection and resilience of the digital ecosystem." Topics on which the Commission is soliciting information include: critical infrastructure cybersecurity, cybersecurity research and development, international markets and the internet of things. Comments were due on September 9, 2016.

The NIST's request for comment is available at: https://www.gpo.gov/fdsys/pkg/FR-2016-08-10/pdf/2016-18948.pdf.

US Federal Deposit Insurance Corporation Chairman Testifies on FDIC Information Security Challenges

On July 14, 2016, Chairman of the US FDIC Martin J. Gruenberg testified before the Committee on Science, Space and Technology of the US House of Representatives regarding the FDIC's approach to cybersecurity, generally as well as in light of two recent security incidents that prompted audits by the Office of Inspector General (OIG). The first security incident involved a former FDIC employee's attempt to transfer copies of sensitive resolution plans from the internal network onto an unencrypted removable storage drive. The second incident involved a former FDIC employee who copied large quantities of sensitive FDIC information, including personally-identifiable information of bank customers, to removable media. During his testimony, Gruenberg discussed the results of the OIG audits and discussed in detail how the FDIC plans to revise its existing information security policies to ensure that similar breaches do not reoccur. Gruenberg emphasized that "an effective FDIC information security and privacy program is critical to [the] mission of maintaining stability and public confidence in the nation's financial system," and assured the Committee that the FDIC is taking all necessary steps to minimize future cybersecurity threats.

Chairman Gruenberg's statement is available at: https://www.fdic.gov/news/news/speeches/spjul1416.html

US Office of Inspector General to Audit Federal Reserve Board's Oversight of Cybersecurity Threats

On June 10, 2016, as part of its Work Plan for the fourth quarter, the Federal Reserve Board's Office of Inspector General announced that it will audit the Federal Reserve Board's oversight of cybersecurity threats to financial institutions. According to the OIG, the growing sophistication and volume of cybersecurity threats presents a serious risk to all financial institutions. The OIG will focus its review on how the Federal Reserve System's examination process has evolved and whether it is providing adequate oversight of financial institutions' information security controls and cybersecurity threats.

The OIG's Work Plan is available at: http://oig.federalreserve.gov/reports/oig-work-plan.pdf.

New EU Directive on Security of Information Systems

On July 19, 2016, a new Directive on cybersecurity was published in the Official Journal of the European Union. The Directive aims to achieve a common level of security of network and information systems within the EU. It requires all Member States to adopt a national strategy on the security of network and information systems and establishes security and notification requirements for operators of essential services and for digital service providers. The Cyber Security Directive applies to certain credit institutions, any operator of a trading venue and central counterparties.

The Directive requires in-scope entities to take appropriate and proportionate technical and organizational measures to manage risks posed to the security of their network and information systems; and (ii) prevent and minimize the impact of incidents affecting the provision of services to ensure continuity of those services. Such entities will also be subject to certain notification requirements regarding any incidents.

The Cyber Security Directive entered into force on August 8, 2016. Member States are required to transpose the Directive into their national laws by May 9, 2018. Member States are required to identify operators of essential services by November 9, 2018.

The Directive is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L1148&from=EN.

International Task Force to Review CyberSecurity of Wholesale Payments

On September 16, 2016, the Bank for International Settlements' Committee on Payments and Market Infrastructures announced that it had established a task force to review the security of wholesale payments that involve banks, FMIs and other financial institutions. The CPMI is tasked with setting global standards for payment, clearing and settlement services. The first phase will involve a review of current practices in the area, with future efforts to be determined based on the findings. The task force follows efforts by the CPMI on cybersecurity and operational risk, including publication of the Guidance on cyber resilience for FMIs, and the CPMI-IOSCO Principles for Financial Market Infrastructures.

The press release is available at: http://www.bis.org/press/p160916.htm, the Guidance on cyber resilience is available at: http://www.bis.org/cpmi/publ/d146.htm and the Principles for Financial Market Infrastructures is available at: http://www.bis.org/cpmi/publ/d101a.pdf.

International Guidance on Cyber Resilience for Financial Market Infrastructures Published

On June 29, 2016, the Bank for International Settlements' CPMI and IOSCO published Guidance on cyber resilience for FMIs. The Guidance supplements the CPMI-IOSCO Principles for Financial Market Infrastructures and aims to assist FMIs to improve their cyber resilience. The Guidance is not intended to impose additional standards on FMIs, but rather to provide FMIs with further detail on how they can enhance their cyber resilience capabilities and limit the increasing risks that cyber threats pose to financial stability. FMIs are expected to take a risk-based approach to implementing the Guidance and to act immediately to improve their cyber resilience, taking the Guidance into account. In particular, FMIs are expected to develop plans by June 2017 to improve their capability to meet the two-hour return to operations requirements.

The Guidance on cyber resilience for FMIs is available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD535.pdf.

Derivatives

US Commodity Futures Trading Commission Chairman Delivers Keynote Remarks at 4th Annual OTC Derivatives Summit North America

On September 15, 2016, as part of his keynote remarks at the 4th Annual OTC Derivatives Summit North America, US Commodity Futures Trading Commission Chairman Timothy Massad addressed the CFTC's achievements in the past year and more specifically, the implementation of global rules setting margin for uncleared swaps and the de minimis threshold for swap dealers.

With respect to the rules on margin for uncleared swaps, Massad stressed the importance of harmonizing the substance of the rules with other regulators, including US domestic prudential regulators and international jurisdictions, as well as addressing the cross-border implications of transactions. Massad pointed to the broad scope of substituted compliance with the rules of other jurisdictions as well as agreed timetables for implementation with international regulators. Massad maintained that despite his disappointment following the European Commission's announcement of a delay in the implementation of their rules, it was appropriate to maintain the September 1, 2016 initial compliance date for transactions between the largest swap dealers.

Regarding the swap dealer de minimis threshold, Massad stated he will recommend a one-year delay in the scheduled reduction of the de minimis threshold for swap dealer registration in order for the CFTC to have more time to consider the issue. The current de minimis threshold of $8 billion is scheduled to decrease to $3 billion in December 2017. Massad also said that he has asked the other CFTC members to consider a reproposed rule setting capital requirements for swap dealers, noting that "[i]t makes sense to finalize this before turning to the threshold" and adding that he hopes it will be done "shortly."

Chairman Massad's full remarks are available at: http://www.cftc.gov/PressRoom/SpeechesTestimony/Massadstatement091516.

US Commodity Futures Trading Commission Announces Final Rules for System Safeguards Testing Requirements and a Comparability Determination for Japan's Uncleared Swap Margin Rules

On September 8, 2016, the CFTC approved a final rule instituting system safeguards testing requirements for designated contract markets, swap execution facilities, swap data repositories and derivatives clearing organizations. In addition, the CFTC also issued a comparability determination for certain of Japan's margin requirements for uncleared swaps. The CFTC's determination would permit substituted compliance with Japan's uncleared swap margin rules in place of the uncleared swap margin provisions of Title VII of the Dodd-Frank Act.

The full text of the CFTC final rule on system safeguards testing requirements is available at: http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/federalregister090816b.pdf and the full text of the CFTC comparability determination is available at: http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/federalregister090816.pdf.

US Commodity Futures Trading Commission Issues No-Action Letter to Swap Dealers to Extend Collateral Rule Deadline Due to Limitations with Custodial Accounts

On September 1, 2016, US-prescribed margin requirements for uncleared swaps took effect, even though implementation of such requirements has been delayed in certain other jurisdictions. The US Commodity Futures Trading Commission's Division of Swap Dealer and Intermediary Oversight also issued a time-limited, no-action letter providing that it will not recommend an enforcement action against a swap dealer subject to the September 1, 2016 compliance date, subject to certain conditions, for failing to fully comply with the custodial arrangement requirements of CFTC regulation 23.157 prior to October 3, 2016. The DSIO states that it is appropriate to provide this relief when a swap dealer is making diligent, good faith implementation efforts in this period of transition.

In a statement accompanying the no-action letter, CFTC Chairman Massad highlighted that such relief may be of particular benefit to smaller firms or foreign firms that had not been able to put in place the necessary arrangements by September 1, 2016. On August 31, 2016, CFTC Commissioner J. Christopher Giancarlo also issued a statement criticizing the decision by the US authorities not to delay implementation of the margin requirement.

The CFTC staff letter is available at: http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/16-70.pdf. The statement by Chairman Massad is available at: http://www.cftc.gov/PressRoom/SpeechesTestimony/massadstatement090116 and the statement by Commissioner Giancarlo is available at: http://www.cftc.gov/PressRoom/SpeechesTestimony/giancarlostatement083116.

US Commodity Futures Trading Commission Seeks Public Comment on Proposed Whistleblower Rule Amendments

On September 1, 2016, the US CFTC requested public comment on proposed amendments to the Whistleblower Rules found in Part 165 of the CFTC's regulations. The amendments would improve the process for reviewing whistleblower claims and clarify staff authority to administer the whistleblower program. The proposal would also strengthen the CFTC's authority to protect whistleblowers from retaliation through CFTC enforcement action under the Commodity Exchange Act.

The amendments would also make changes to eligibility requirements, the award claims process (and review of that process), whistleblower identifying information and the treatment of employer confidentiality provisions. Comments to the proposed amendments were due on September 29, 2016.

The proposed Whistleblower Rule amendments are available at: http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-20745a.pdf.

US Commodity Futures Trading Commission Extends Comment Period on Proposed Amendments Regarding Commodity Pool Operator Annual Reports

On August 30, 2016, the US CFTC extended the comment period to September 20, 2016, on its proposed amendments to Regulation 4.22 with respect to the annual report that each commodity pool operator registered or required to be registered with the CFTC must distribute for each commodity pool that it operates.

The proposed amendments are available at: http://www.cftc.gov/idc/groups/public/@newsroom/documents/file/federalregister083016.pdf.

US Commodity Futures Trading Commission Finalizes Report on the De Minimis Exception to the Definition of Swap Dealer

On August 15, 2016, the CFTC issued a final report on the *de minimis* exception from the definition of a "swap dealer" under CFTC Regulation 1.3(ggg). The exception currently applies to a person whose swap dealing activities are less than an aggregate gross notional amount of $8 billion over the prior 12-month period. Unless the CFTC takes action, the $8 billion threshold will be reduced on December 31, 2017 to $3 billion. While CFTC staff did not ultimately issue a recommendation, they noted the advantages and disadvantages of implementing, delaying or changing the $3 billion threshold, creating different threshold for various asset classes or creating a multi-factor test for determining the *de minimis* exception.

CFTC Commissioner J. Christopher Giancarlo issued a statement upon release of the report expressing disappointment that the staff did not recommend eliminating or delaying the transition to a $3 billion threshold. He noted that market participants now have to prepare for the implementation of the lower threshold and at the same time urged the Commission to keep the registration threshold at $8 billion.

The CFTC report is available at: http://www.cftc.gov/idc/groups/public/@swaps/documents/file/dfreport_sddeminis081516.pdf and Commissioner Giancarlo's statement is available at: http://www.cftc.gov/PressRoom/SpeechesTestimony/Giancarlostatement081516.

US Commodity Futures Trading Commission Proposes Amendments to Timing for Filing Certain Chief Compliance Officer Annual Reports

On August 9, 2016, the CFTC issued proposed amendments to CFTC Regulation 3.3 concerning chief compliance officers of futures commission merchants, swap dealers and major swap participants. The proposed amendments would codify existing no-action relief (CFTC Staff Letter 15-15) regarding when such registrants must furnish their CCO annual report to the CFTC, clarify filing requirements for registrants located in a jurisdiction for which the CFTC has issued a comparability determination and delegate to the Director of the Division of Swap Dealer and Intermediary Oversight authority to grant extensions to the CCO annual report filing deadline. Comments on the proposed amendments were due by September 12, 2016.

The proposed amendments are available at: http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-19231a.pdf and CFTC Staff Letter No. 15-15 is available at: http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/15-15.pdf.

US Commodity Futures Trading Commission Allows Expanded SIDCO Use of Fed Accounts

On August 8, 2016, the CFTC approved an exemption for Federal Reserve Banks that maintain customer accounts for certain derivatives clearing organizations from liability under the Commodity Exchange Act. The exemption allows the Federal Reserve Banks to hold customer funds of DCOs designated by the FSOC as systemically important without being subject to liability under the CEA and also exempts the Federal Reserve Banks from private rights of action that could otherwise be brought under the CEA.

The CFTC press release, which includes links to the exemption, is available at: http://www.cftc.gov/PressRoom/PressReleases/pr7421-16.

US Commodity Futures Trading Commission Restricts Use of Certain Money Market Funds for Margin

On August 8, 2016, the CFTC's Division of Clearing and Risk issued an interpretative letter where CFTC staff stated that it would be inconsistent with CFTC regulations for a DCO to accept or hold initial margin in the form of, or to invest funds belonging to the DCO, its clearing members or clearing members' customers in, certain prime and government money market funds that have authority to suspend redemptions. However, government MMFs that do not adopt such redemption restrictions would remain acceptable for margin collateral and investments.

The CFTC's Division of Swap Dealer and Intermediary Oversight issued a related no-action letter. Although an FCM will generally not be permitted to invest segregated customer funds (including an FCM's own funds held in a segregated account) in such prime and government MMFs, the letter allows such investments if they are limited to the amount of funds the FCM holds in excess of the firm's targeted residual interest. The letter also addresses the treatment of permitted MMF investments by an FCM under Rule 1.25.

The CFTC press release, which includes links to the interpretative letter and no-action letter, is available at: http://www.cftc.gov/PressRoom/PressReleases/pr7421-16.

US Commodity Futures Trading Commission Publishes Final Response to Court Remand on Costs and Benefits of Cross-Border Guidance

On August 4, 2016, the CFTC issued a Final Response to the United States District Court for the *District of Columbia Remand Order in Securities Industry and Financial Markets Association, et al. v. United States Commodity Futures Trading Commission*, which was a challenge by industry groups to the CFTC's guidance as to the application of certain requirements to cross-border swaps transactions. In a decision issued on September 16, 2014, the District Court denied the plaintiffs' demand that the CFTC be enjoined from enforcing extraterritorially Title VII of the Dodd-Frank Act and related regulations, and upheld the CFTC's 2013 cross-border guidance. The District Court did direct the CFTC to further explain and consider the costs and benefits of certain rules.

Accordingly, in March 2015, the CFTC published an Initial Response to the Remand Order, which further explained the CFTC's earlier consideration of costs and benefits of these rules and solicited comments. The CFTC received a number of comments. The Final Response issued by the CFTC on August 4 contains further consideration of costs and benefits and explains the CFTC's approach to international harmonization of swaps regulations to carry out the Dodd-Frank reforms in cooperation with global regulators and to promote stable and healthy markets.

The CFTC's Divisions of Swap Dealer and Intermediary Oversight, Clearing and Risk and Market Oversight also issued a time-limited no-action letter that extends relief, which was originally provided in November 2013 and subsequently extended, to swap dealers registered with the CFTC that are established under the laws of jurisdictions other than the United States from certain transaction-level requirements under the Commodity Exchange Act. The relief is extended until the earlier of September 30, 2017 and the effective date of any CFTC action with respect to matters addressed by the DSIO advisory.

The CFTC press release, which includes links to the CFTC final response and no-action letter, as well as related statements by CFTC Chairman Timothy Massad and Commissioner J. Christopher Giancarlo, is available at: http://www.cftc.gov/PressRoom/PressReleases/pr7418-16.

US Federal Agencies Finalize Rule Exempting Certain Commercial and Financial End Users from Margin Requirements

On August 1, 2016, the US Federal Reserve Board, FDIC, OCC, Federal Housing Finance Agency and Farm Credit Administration announced a final rule exempting from the agencies' margin requirements certain non-cleared swaps with commercial end users, small banks, savings associations, Farm Credit System institutions and credit unions with $10 billion or less in total assets. Certain non-cleared swaps with certain treasury affiliates, certain financial cooperatives and captive finance companies also are exempted. In all cases, the non-cleared swaps must hedge or mitigate commercial risk of these counterparties and satisfy the applicable requirements for an exemption from mandatory clearing.

The exemptions were first adopted by interim final rule published in the Federal Register in November 2015. The final rule adopts the earlier interim final rule as final without change. The agencies established initial and variation margin requirements for non-cleared swaps, as required by the Dodd-Frank Act, in a separate rulemaking published in November 2015.

The final rule is available at: https://www.fdic.gov/news/news/press/2016/pr16062a.pdf.

US Commodity Futures Trading Commission and Canadian Authorities Sign Counterparts to Memorandum of Understanding on Cross-Border Supervision

On July 28, 2016, the CFTC announced the signing of counterparts with certain Canadian authorities to a Memorandum of Understanding (MOU), originally executed on March 25, 2014, regarding cooperation and the exchange of information in the supervision and oversight of regulated entities that operate on a cross-border basis in the United States and in Canada. The scope of the MOU includes markets and organized trading platforms, central counterparties, trade repositories and intermediaries, dealers and other market participants.

The CFTC press release, which includes the counterparts to the MOU, is available at: http://www.cftc.gov/PressRoom/PressReleases/pr7413-16.

US Commodity Futures Trading Commission Proposes to Amend the Conditions for Exemption from Registration for Certain Foreign Persons

On July 27, 2016, the CFTC announced that it is seeking comment on proposed amendments to CFTC Regulation 3.10(c) to modify an exemption from registration for certain foreign persons in connection with commodity interest transactions solely on behalf of persons located outside the US, or on behalf of certain international financial institutions. The amendments would codify certain existing no-action relief. Comments were due by September 6, 2016.

The CFTC proposal is available at: http://www.cftc.gov/idc/groups/public/@lrfederalregister/documents/file/2016-18210a.pdf.

US Office of Financial Research Studies Whether New Bilateral Trading Rules Incentivize Central Clearing of Derivatives

On July 26, 2016, the OFR published a working paper that examines whether new rules imposed on bilateral trading incentivize central clearing of derivatives. By comparing the total capital and collateral costs when banks transact bilaterally to the capital and collateral costs when they clear through CCPs, the study finds that central clearing is sometimes more expensive. While "the cost comparison does not necessarily favor central clearing, . . . when it does, the incentive may be driven by questionable differences in CCPs' default waterfall resources." In the absence of a cost advantage for central clearing, market participants may be motivated to customize contracts in order to trade them bilaterally. The authors find that without a cost advantage, banks may also be less inclined to move legacy trades to CCPs.

The OFR working paper is available at: https://financialresearch.gov/from-the-management-team/2016/07/26/central-clearing-of-derivatives-may-not-always-have-cost-advantage/.

US Commodity Future Trading Commission Staff Issues Advisory Clarifying Chief Compliance Officer Reporting Line Requirements

On July 25, 2016, the CFTC's Division of Swap Dealer and Intermediary Oversight issued a staff advisory regarding chief compliance officer reporting line requirements for swap dealers, major swap participants and futures commission merchants under CFTC Regulation 3.3. The advisory clarifies the regulation's required elements and addresses additional supervisory relationships that a chief compliance officer may have with senior management in addition to those with the board or the senior officer of the registrant.

The CFTC staff advisory is available at: http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/16-62.pdf.

US Commodity Futures Trading Commission Extends Designation of DTCC-SWIFT as Provider of Legal Entity Identifiers for Another Year

On July 18, 2016, the CFTC issued an Order extending the designation of DTCC-SWIFT as the provider of legal entity identifiers for entities under its jurisdiction, including swaps and swap counterparties, by another year. The CFTC initially designated DTCC-SWIFT as LEI provider by an Order on July 23, 2012. The CFTC has previously extended such designation. Consistent with the prior CFTC orders, registered entities and swap counterparties subject to the CFTC's jurisdiction can continue to comply with the CFTC's swap data recordkeeping and reporting rules by using LEIs issued by DTCC-SWIFT.

This order is available at https://www.federalregister.gov/articles/2016/07/21/2016-17229/order-extending-the-designation-of-the-provider-of-legal-entity-identifiers-to-be-used-in.

US Commodity Futures Trading Commission Staff Issues Advisory Regarding Compliance Requirements of Suspicious Activity Reporting and Economic Sanctions Programs

On July 6, 2016, the CFTC Division of Swap Dealer and Intermediary Oversight issued a staff advisory to remind futures commission merchants and introducing brokers of their compliance obligations to report suspicious activities to the Financial Crimes Enforcement Network. In addition, the staff advisory reminds all CFTC registrants of their compliance obligations regarding economic sanctions programs against countries and groups of individuals administered by the Office of Foreign Assets Control. The staff advisory provides a brief outline of the requirements of suspicious activity reporting and the requirements of OFAC.

The CFTC staff advisory is available at: http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/16-60.pdf.

US Senator Elizabeth Warren Introduces Derivatives Legislation

On June 29, 2016, US Senator Elizabeth Warren (D-Mass), along with US Senator Mark Warner (D-Va), introduced a new derivatives regulation bill. The Derivatives Oversight and Taxpayer Protection Act proposes to strengthen federal oversight of the derivatives market and ensure that big financial firms, instead of taxpayers, will be held responsible for derivative losses.

If enacted, Senator Warren's bill would greatly expand the regulatory capacities and powers of the CFTC. It proposes to provide the CFTC with a stable funding stream and allows the agency to impose penalties large enough to impact the bottom lines of even the largest financial firms. The bill also proposes to place certain cross-border and foreign exchange swaps under CFTC jurisdiction, changes how derivatives are treated in bankruptcy, requires posting of initial margin for inter-affiliate swaps, limits the use of netting in calculating risk-based capital and leverage limits relating to derivatives transactions and requires regulators to review derivatives clearinghouses.

The text of the bill is available at: http://www.warren.senate.gov/files/documents/2016-6-29_Derivatives_Oversight_and_Taxpayer_Protection_Act_Bill_Text.pdf.

US Commodity Futures Trading Commission Issues Final Rule to Amend Swap Data Recordkeeping and Reporting Requirements for Cleared Swaps

On June 27, 2016, the CFTC approved a final rule that amends existing swap reporting regulations to provide additional clarity to swap counterparties and registered entities regarding their reporting obligations for cleared swap transactions and to improve the efficiency of data collection and maintenance associated with the reporting of the swaps involved in cleared swap transactions.

The final rule removes uncertainty as to which counterparty to a swap is responsible for reporting creation and continuation data for each of the various components of a cleared swap transaction. For example, it clarifies whose obligation it is to report the extinguishment of a swap upon its acceptance by a derivatives clearing organization for clearing. The CFTC anticipates that the rule will have a number of other benefits, including a reduced likelihood of double counting notional exposures and an improved ability to trace the history of a cleared swap transaction from execution between the original counterparties to clearing novation. The rule was published in the Federal Register on June 27, 2016, and will become effective 180 days from the date of publication.

The final rule is available at: https://www.gpo.gov/fdsys/pkg/FR-2016-06-27/pdf/2016-14414.pdf.

US Commodity Futures Trading Commission Requests Public Comment on Swap Clearing Requirement Submissions

On June 23, 2016, the CFTC requested public comment on 34 submissions the CFTC received over the past several years from seven registered derivatives clearing organizations pursuant to section 2(h)(2)(B) of the Commodity Exchange Act and CFTC regulation 39.5(b). The submissions cover certain interest rate swaps, credit default swaps, foreign exchange non-deliverable forwards, energy swaps, agricultural swaps and inflation swaps. Public comments will inform the CFTC as it considers whether to propose a swap clearing requirement pursuant to section 2(h)(2)(D) of the CEA.

In posting these submissions, the CFTC is not proposing a swap clearing requirement, as the CFTC did most recently on June 9, 2016, regarding certain interest rate swaps. The submissions do not include those swaps that are subject to this recent proposal or the swaps that are currently required to be cleared under the CFTC's existing clearing requirements. If the CFTC decides to propose a clearing requirement determination for any of the swaps covered by the submissions posted on June 23, then, at that time, the CFTC will invite further public comment in response to a notice of proposed rulemaking, similar to the one published in the Federal Register on June 16, 2016 (81 Fed. Reg. 39506).

Comments may pertain specifically to a single submission or generally to several or all submissions. The CFTC is particularly interested in comments that provide data and analysis and that discuss the swaps in terms of the five factors that the CFTC is required to consider in determining whether to issue a clearing requirement determination under section 2(h)(2)(D) of the CEA. The comment period ended on July 25, 2016.

The CFTC press release is available at: http://www.cftc.gov/PressRoom/PressReleases/pr7396-16.

Commissioner of the US Commodity Futures Trading Commission Outlines Proposals to Improve Governance in Regulated Entities

On June 21, 2016, as part of her remarks at the Managed Funds Association Forum, CFTC Commissioner Sharon Bowen outlined various proposals to improve governance in CFTC-regulated entities.

Commissioner Bowen emphasized maintaining independent, high-caliber boards of directors. She suggested that the boards of CFTC-regulated entities “craft qualitative and quantitative standards for directors” to ensure individuals meet expected fitness standards, “create a strong company ethos” to improve the culture of compliance and limit the tenure of independent audit and compensation committee members to protect director independence.

Commissioner Bowen also proposed swap execution facility reform, calling for the centralized oversight of SEF surveillance and enforcement functions. She proposed that “all SEFs should be under one self-regulatory organization . . . whether that is the NFA or some other SRO,” so as to increase the efficiency of enforcement mechanisms, standardize rules and increase transparency.

Finally, with regards to swap intermediaries, Commissioner Bowen stated that “the CFTC should also require registration and testing of all swap intermediaries.” Registration would allow the CFTC to obtain more information about those entities intermediating trades in the market, and assess whether their actions are appropriate. Moreover, having robust testing standards for swap intermediaries would serve as a quality control check.

Commissioner Bowen’s remarks are available at: http://www.cftc.gov/PressRoom/SpeechesTestimony/opabowen-9.

US Federal Deposit Insurance Corporation Approves Terrorism Risk Insurance Program Reauthorization Act Final Rule

On June 21, 2016, the US FDIC approved a final rule developed jointly by the FDIC, the OCC, the Federal Reserve Board, the Farm Credit Administration and the Federal Housing Finance Agency that, pursuant to Title III of the Terrorism Risk Insurance Program Reauthorization Act (TRIPRA), exempts certain non-cleared swaps and non-cleared security-based swaps with certain financial and non-financial end users from initial and variation margin requirements required pursuant to Sections 731 and 765 of the Dodd-Frank Act. Specifically, the final rule exempts from the margin requirements certain swaps with counterparties that are commercial end users, certain captive finance affiliates, treasury affiliates, cooperatives and small financial institutions. The final rule is effective October 1, 2016.

The FDIC final rule is available at: https://www.fdic.gov/news/board/2016/2016-06-21_notice_sum_c_fr.pdf.

European Supervisory Authorities Opines on Final Draft Technical Standards on Uncleared Derivatives

On September 8, 2016, the Joint Committee of the ESAs published an Opinion on the European Commission's proposed amendments to the final draft RTS on risk mitigation techniques for uncleared OTC derivatives under the European Markets Infrastructure Regulation. The Joint Committee is made up of the EBA, ESMA and the European Insurance and Occupational Pensions Authority. The Opinion includes a revised version of the final draft RTS. Under the European Market Infrastructure Regulation, counterparties to uncleared OTC derivative transactions are required to implement risk mitigation techniques to reduce counterparty credit risk. One of these risk mitigation techniques is the exchange of initial and variation margin in relation to uncleared OTC derivatives. These RTS provide greater detail of the requirements such as the margin amounts to be posted and collected, the methodologies by which the minimum amount of initial margin and variation margin should be calculated and the list of securities which are eligible as collateral and the ways in which margin should be segregated as well as various product and structural-based exemptions.

On July 28, 2016, the European Commission requested the ESAs to amend the final draft RTS and submit a modified version for approval. The Commission's proposed changes to the RTS, included that cash initial margin may be held with EU credit institutions and their third country equivalents, the timing of applications for intragroup exemptions and the effective date of the requirements for FX derivatives, which will be after the implementation of the MiFID II framework. The Commission proposed to delay implementation of the EU margin for uncleared swaps rules, which were due to apply from September 1, 2016. This delay means that the EU rules will not be implemented in line with the international standards and will apply after the equivalent rules in other jurisdictions, including the USA and Japan.

The ESAs have rejected certain amendments relating to concentration limits on initial margin for pensions scheme arrangements. The Commission also proposed amendments to the calculation of the threshold against non-netting jurisdictions, but the ESAs have concluded that no change should be made as no new supporting evidence has been presented to warrant the change. The ESAs also noted that the treatment of covered bonds in the final draft RTS was designed pursuant to EMIR and they have maintained that no substantive changes as per the Commission's proposals should be made. The ESAs have also rejected amendments regarding the treatment of bilateral derivative contracts where a counterparty is a CCP, transactions with third country counterparties and the process for regulators on the exemption of intragroup derivative contracts. The ESAs are also proposing some non-substantive amendments, including the introduction of a recital containing the reasoning for a delayed phase-in of the requirements for equity options and clarification on the process around the intragroup exemption.

As the ESAs have submitted the draft RTS with amendments inconsistent with those proposed by the Commission, the Commission may now adopt RTS with the proposed amendments it considers relevant, or reject any amendments accordingly. The European Parliament and the Council of the European Union will have three months to object to the RTS from the date the Commission adopts it, which is expected to take place on October 4, 2016.

The Opinion is available at: https://esas-joint-committee.europa.eu/Publications/Opinions/ESAs%202016%2062%20(ESAs%20Opinion%20on%20RTS%20on%20OTC%20margins%20%20EMIR%2BRTS)-PR.pdf.

The Commission's letter is available at: http://ec.europa.eu/finance/financial-markets/docs/derivatives/160728-letter-esas_en.pdf, the Commission's adopted RTS is available at: http://ec.europa.eu/finance/financial-markets/docs/derivatives/160728-delegated-regulation_en.pdf, the annex to the adopted RTS is available at: http://ec.europa.eu/finance/financial-markets/docs/derivatives/160728-delegated-regulation-annex_en.pdf, the addendum to the adopted RTS is available at: http://ec.europa.eu/finance/financial-markets/docs/derivatives/160728-delegated-regulation-addendum_en.pdf and the ESA's final draft RTS is available at: http://www.eba.europa.eu/documents/10180/1398349/RTS+on+Risk+Mitigation+Techniques+for+OTC+contracts+%28JC-2016-+18%29.pdf.

US Markets Granted Equivalence Status under European Market Infrastructure Regulation

On July 22, 2016, ESMA published a list of US Designated Contract Markets considered equivalent to a regulated market in the European Union. The list is based on a Commission Implementing Decision published in the Official Journal of the European Union on July 2, 2016, which deems 15 DCMs located in the United States are equivalent. The DCMs have been deemed equivalent for purposes of the definition of OTC derivatives in EMIR. This means that derivative contracts traded on these DCMs would not be deemed to be OTC derivatives and therefore not be subject an obligation to clear the transactions, report on them and undertake risk mitigation steps as if they were OTC, under EMIR. To be deemed equivalent, a third country market must comply with legally binding requirements in its home-state equivalent to MiFID and must also be subject to effective supervision and enforcement in that third country on an ongoing basis.

The Commission Implementing Decision is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016D1073&qid=1470648008232&from=EN and ESMA's library on post trading is available at: https://www.esma.europa.eu/databases-library/esma-library/?f%5b0%5d=im_esma_sections%3A24.

EU Clearing Obligation for Interest Rate Swaps Extended

On July 20, 2016, a Commission Delegated Regulation supplementing EMIR with regard to RTS on the clearing obligation was published in the Official Journal of the European Union. The RTS relates to classes of over-the-counter (OTC) derivatives that are to be subject to the clearing obligation, and specifies that the following classes will be subject to the clearing obligation under

EMIR: (a) fixed-to-float interest rate swap classes denominated in NOK, PLN and SEK; and (b) forward rate agreement classes denominated in NOK, PLN and SEK will be subject to the clearing obligation under EMIR. These classes will not include contracts concluded with covered bond issuers or with cover pools for covered bonds, provided that they meet certain conditions set out in the RTS.

The RTS also specifies the dates from which the clearing obligation takes effect and the minimum remaining maturities for the purposes of frontloading. Different dates apply for different types of counterparties, which are divided into the following categories: (1) Category 1, comprising clearing members for at least one of the classes of OTC interest rate derivatives subject to clearing (including one of the G4 currencies that are already cleared); (2) Category 2, comprising financial counterparties and AIFs which are not clearing members and have over EUR8 billion gross OTC derivatives; (3) Category 3, comprising financial counterparties and AIFs which are not clearing members and have less than EUR8 billion gross OTC derivatives; and (4) Category 4, comprising non-financial counterparties not included in the other categories. The dates for the clearing obligation applicable for counterparties in Categories 2 and 4 were subsequently amended by a corrigendum to the RTS, which was published in the Official Journal of the European Union on July 21, 2016. Taking into account the corrigendum, the effective dates for the clearing obligation are: February 9, 2017 for Category 1; August 9, 2017 for Category 2; February 9, 2018 for Category 3; and August 9, 2019 for Category 4. The RTS entered into force on August 9, 2016.

The RTS is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1178&rid=1 and the corrigendum is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1178R(01)&rid=2.

European Proposals to Delay Clearing Obligation for Financial Counterparties with Limited Derivatives Trading Activity

On July 13, 2016, ESMA launched a consultation on proposals to delay the application of the clearing obligation for FCs and AIFs with a limited volume of derivatives activity.

EMIR imposes a clearing obligation on certain classes of derivatives. ESMA has so far assessed that the clearing obligation should apply to interest rate swaps denominated in seven currencies (EUR, GBP, JPY, USD NOK, PLN and SEK) and to two classes of credit default swaps indices: iTraxx Europe Main and iTraxx Europe Crossover. The obligation to clear OTC IRS denominated in the G4 currencies (EUR, GBP, JPY and USD) applied to entities that are clearing notes of EU CCPs from June 21, 2016.

The clearing obligation is phased in according to the category of a counterparty under a four-fold structure. Those categories are: (i) clearing members for at least one of the relevant asset classes of at least one CCP authorized or recognized to clear one of those classes; (ii) FCs and AIFs belonging to a group whose group aggregate month end average of outstanding notional amount of non-centrally cleared derivatives for the three months following the relevant clearing obligation entering into force is above €8 billion; (iii) FCs and AIFs not in either categories (i) or (ii); and (iv) non-financial counterparties subject to the clearing obligation that are not in any of the other categories. ESMA is proposing to delay the implementation of the clearing obligation for a further two years for FCs and AIFs not in either category (i) or (ii) (i.e. category (iii)-(iv) counterparties). The clearing obligation for these category (iii) counterparties is currently due to begin on June 21, 2017 for OTC IRS denominated in the G4 currencies, and on February 9, 2018 for European index CDS.

ESMA's proposals are based on feedback it has received that these counterparties have been experiencing difficulties in connecting to CCPs, becoming a client of a clearing member or setting up indirect clearing arrangements. ESMA would like to learn more about those difficulties so that it can assess how to address the issue. The consultation closed on September 5, 2016.

The consultation paper is available at: https://www.esma.europa.eu/sites/default/files/library/2016-1125_cp_on_clearing_obligation_for_financial_counterparties.pdf.

European Securities and Markets Authority Opines on Further Exemptions from the Clearing Obligation for Pension Schemes

On June 30, 2016, ESMA published an Opinion, dated June 23, 2016, on a Denmark-based pension scheme that is to be exempted from the clearing obligation under EMIR. The Opinion was requested by Finanstilsynet (the Danish financial supervisory authority) and relates to life insurer personal schemes. ESMA published a positive opinion for three other types of Danish pension schemes in April this year: life insurer occupational schemes, labor market-related life insurer and multiemployer pension fund. Transitional exemptions from the clearing obligation under EMIR can be granted to pension scheme arrangements that meet certain criteria, essentially, when OTC derivatives contracts are entered into and are used for hedging purposes. To obtain an exemption, requests must be made by the pension scheme to a national regulator. Under EMIR, the national regulator must then seek an Opinion from ESMA before making a final exemption decision. This follows the extension of the transitional exemption period from the clearing obligation for pension funds to August 16, 2017, which is the revised date by which pension funds must comply with the EU clearing obligation under EMIR.

ESMA's Opinion is available at: https://www.esma.europa.eu/press-news/esma-news/esma-issues-opinions-danish-pension-scheme-be-exempt-central-clearing-under.

Financial Stability Board Reports on Implementation of Over-the-Counter Derivatives Reforms

On August 26, 2016, the FSB published its eleventh progress report on the implementation of reforms by standard-setting bodies, national and regional authorities and market participants to the OTC derivatives market as agreed by the G20. Such reforms include the trade reporting of OTC derivatives, central clearing of standardized OTC derivatives and higher capital and minimum margin requirements for non-centrally cleared derivatives. The FSB concluded that the progress of implementing reforms is continuing, but that regulators have noted challenges to implementation.

On trade reporting, 19 out of 24 FSB members complied with the requirements covering 90% of derivatives as at June 30, 2016, with 23 members expecting to have such requirements in force by the end of 2017. The FSB commented that work is progressing on the removal of legal barriers to OTC derivatives trading. With regard to central clearing, the FSB noted that a majority of its members had a framework in force for determining when standardized OTC derivatives should be centrally cleared that covers 90% of OTC derivative transactions. Capital requirements for non-centrally cleared derivatives have largely been enforced, but less progress has been made on margin requirements. The FSB commented that around half of their member jurisdictions do not appear to be on track to have implemented variation margin requirements in accordance with the second and final phase requirements, which are due by March 2017. 11 jurisdictions have implemented frameworks for determining mandatory platform requirements. A further progress report is to be published by the FSB prior to the G20 Summit in July 2017.

The report is available at: http://www.fsb.org/wp-content/uploads/OTC-Derivatives-Market-Reforms-Eleventh-Progress-Report.pdf.

Second Consultation on Harmonization of the Unique Product Identifier Launched

On August 18, 2016, the CPMI and the Board of the IOSCO published a second report on proposed guidance for a harmonized Unique Product Identifier. The purpose of the UPI is to uniquely identify OTC derivatives products that regulators require, or may require in the future, to be reported to trade repositories. The UPI system will assign a code to each OTC derivative product which maps to a set of data elements describing the product in a corresponding reference database. Currently, OTC derivative trades can be reported to one of the six trade repositories currently authorized in the EU. However, in order to properly mitigate systemic risk and protect against market abuse, it is necessary for data across trade repositories to be aggregated and for reporting fields to be harmonized so that national regulators have a comprehensive view of the OTC derivatives markets and trading activity. The first consultation focused on the reference database (or classification system). The focus of this second consultation is on the possible form, content and granularity of reference data assigned to each OTC derivative product. Comments on the proposals are due by September 30, 2016, with publication of final guidance expected around the end of 2016.

The second consultative report is available at: http://www.bis.org/cpmi/publ/d151.pdf and the first consultative report is available at: http://www.bis.org/cpmi/publ/d141.pdf.

Enforcement

US Consumer Financial Protection Bureau Fines Wells Fargo for Illegal Sales Practices

On September 8, 2016, the US Consumer Financial Protection Bureau issued an enforcement action against Wells Fargo Bank, N.A. for widespread sales practices violations, including opening unauthorized deposit and credit card accounts on behalf of customers without their knowledge or consent in order to boost sales figures. The CFPB consent order finds that Wells Fargo's violations included: (i) opening deposit accounts and transferring customer funds without the customer's authorization, knowledge or consent; (ii) applying for credit card accounts without customer authorization, as a result of which many customers incurred fees; (iii) issuing and activating debit cards using consumers' information without authorization; and (iv) creating false e-mail addresses to enroll consumers in on-line banking services without their knowledge or consent.

The full text of the CFPB consent order is available at:
http://files.consumerfinance.gov/f/documents/092016_cfpb_WFBconsentorder.pdf.

US Securities and Exchange Commission Whistleblower Program Surpasses $100 Million in Awards

On August 30, 2016, the US Securities and Exchange Commission announced that awards to whistleblowers have surpassed the $100 million mark with the SEC's whistleblower program's issuance of the second-largest award of more than $22 million that was announced the same day. The whistleblower program was established by Congress to incentivize whistleblowers with specific, timely and credible information about federal securities law violations to report such information to the SEC. To date, enforcement actions resulting from whistleblower tips have resulted in orders for more than $500 million in financial remedies.

Whistleblowers may be eligible for an award when they voluntarily provide the SEC with information that leads to a successful enforcement action. Whistleblower awards can range from 10 percent to 30 percent of the money collected when the monetary sanctions ordered exceed $1 million. The SEC paid its first award in 2012, just over a year after its Office of the Whistleblower opened for business. All payments are made out of an investor protection fund established by Congress that is financed through monetary sanctions paid to the SEC by securities law violators.

The SEC press release is available at: http://www.sec.gov/news/pressrelease/2016-173.html and information about the whistleblower program is available at: http://www.sec.gov/whistleblower.

US Federal Reserve Board Invites Comment on Interim Final Rule Adjusting Maximum Civil Money Penalties

On August 1, 2016, the US Federal Reserve Board invited comment on an interim final rule adjusting the Federal Reserve Board's maximum civil money penalties, as required by law.

In November 2015, a law was passed that requires all federal agencies to adjust their maximum civil money penalty limits annually, rather than every four years, as previously required. Additionally, the law sets forth the adjustment formula for federal agencies. The Federal Register notice details the civil money penalty adjustments made by the Federal Reserve Board.

The interim final rule became effective on August 1, 2016, and will apply to those penalties assessed after this date. The Federal Reserve Board was accepting comments until August 30, 2016.

The interim final rule is available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160801a1.pdf.

European Securities and Markets Authority Fines Fitch for Breach of EU Regulations

On July 21, 2016, ESMA issued Fitch Ratings Limited with fines totaling €1.38 million for numerous allegedly negligent breaches of the requirements relating to sovereign ratings set out in the EU Credit Rating Agencies Regulation.

On January 26, 2012, Fitch informed Slovenia of its intention to downgrade its sovereign rating, whilst providing no information establishing the grounds for its intention. Fitch subsequently sent such information on the following day, but, three hours after doing so, it made a public announcement of the sovereign rating downgrade. ESMA found Fitch to be in breach of the requirement under the CRA Regulation that a CRA must inform the rated entity at least 12 hours before publication of the credit rating and of the principal grounds on which the order is based to give the entity an opportunity to highlight any factual errors to the CRA.

Between June 1, 2011 and February 14, 2012, ESMA found that Fitch's internal controls for the purposes of complying with the 12 hours' notice requirement were in breach of the CRA Regulation. For example, Fitch's policy framework provided unclear guidance to staff on how to comply with the 12 hours' notice requirement and those responsible for supervision of the requirement did not exercise their control functions sufficiently.

Between December 1, 2010 and June 7, 2010, certain senior analysts at Fitch transmitted information about upcoming ratings actions on sovereign ratings to certain senior persons at Fitch's parent entity before it was made public. ESMA found that Fitch was in breach of the prohibition under the CRA Regulation on sharing or disclosing information about new or potentially new credit ratings with any person not involved in the production of the ratings. In total, nine email exchanges took place during the relevant period, with only four email exchanges taking place after June 1, 2011, the date of entry into force of the infringement provisions in the CRA Regulation. ESMA's fines consisted of €60,000 for breach of the 12-hour requirement, €825,000 for lack of internal controls and €495,000 for unauthorized disclosures.

ESMA's decision is available at: https://www.esma.europa.eu/sites/default/files/library/2016-1131_decision_on_fitch.pdf and the public notice is available at: https://www.esma.europa.eu/sites/default/files/library/2016-1159_public_notice.pdf.

UK Regulator Bans Former Barclays Wealth Management Chief Operating Officer

On September 14, 2016, the Financial Conduct Authority published a Final Notice banning Mr. Andrew James Tinney from the UK financial services industry. Mr. Tinney was the Global Chief Operating Officer of Barclays Wealth and Investment Management, a division of Barclays Bank PLC, between May 20, 2010 and December 17, 2012. During that period, Mr. Tinney was responsible for overseeing global technology, operations and infrastructure activities as well as having joint responsibility for the entity's legal function, including a compliance function. In his role as COO, Mr. Tinney was approved by the FCA to carry out certain functions and was required to comply with the FCA's Statements of Principle; in particular, he was required to act with integrity.

The acts in question stem from Mr. Tinney's appointment as Chairman of a Steering Committee to oversee a remediation program that Barclays was undertaking to correct certain deficiencies identified by the Securities Exchange Commission during its examination of Barclays Wealth's US operation, Barclays Wealth Americas (BWA). The remediation program generated findings that were not favorable for the senior management of BWA and recommended that BWA should replace or consider replacing certain members. As part of the Steering Committee, Mr. Tinney received a hard copy of the Report on March 30, 2012.

The FCA found that Mr. Tinney engaged in actions during the relevant period to conceal the Report from those members of senior management referred to within it, with the intention that it would never be seen by or available to others. The FCA also found that Mr. Tinney recklessly made misleading statements and omissions to certain colleagues as to the nature and existence of the Report. As a consequence of his actions, he exposed Barclays to potential breaches of legal and regulatory obligations, including requests from the Federal Reserve Bank of New York. In December 2012, Barclays received a copy of the Report and shortly afterwards suspended Mr. Tinney's employment. Mr. Tinney subsequently resigned.

For the reasons outlined in the Final Notice, the FCA concluded that Mr. Tinney failed to carry out his role with integrity and decided that he should be banned from the financial services industry. The FCA believes that Mr. Tinney's conduct was particularly serious due to his seniority and industry experience. Mr. Tinney disputes the FCA's decision and the matter has been referred to the Upper Tribunal which will determine whether the notice should be dismissed or if the FCA should reconsider its decision.

The final notice is available at: https://www.fca.org.uk/sites/default/files/andrew-tinney.pdf.

UK Regulator Bans Sole Trader Investment Business from the UK Financial Services Industry

On September 1, 2016, the FCA issued a final notice banning Ms. Elizabeth Anne Parry from the UK financial services industry. The actions of Ms. Parry which gave rise to this decision concern alleged breaches of FCA Handbook provisions implemented on December 31, 2012 following the Retail Distribution Review. The RDR was a wide-ranging review of the retail investment market and the resulting proposals were intended to ensure that financial advice is given only by appropriately qualified advisers. The Training and Competence section of the FCA Handbook was subsequently amended to raise the required benchmark qualification level for all retail investment advisers and introduced an overarching standard for continuing professional development. All individual investment advisers were required to reach the QFC Level 4 or equivalent and hold a Statement of Professional Standing. The FCA concluded that on separate occasions between January 29, 2013 and September 3, 2015, Ms. Parry made misleading statements and provided falsified documentation with the intention of misleading the FCA to believe that she had attained the appropriate qualifications from her professional body to provide investment advice to retailers.

The FCA concluded that Ms. Parry's actions amounted to a failure to act with integrity and were therefore in contravention of Statement of Principle 1 of the FCA's Statements of Principle. Furthermore, the FCA concluded that Ms. Parry posed a risk to consumers and the integrity of the financial system. In addition to banning Ms. Parry from the financial services industry, the FCA imposed a fine of £109,400. In imposing the financial penalty, the FCA had regard to the need for credible deterrence, the nature, seriousness and impact of the breach and the aggravating factors relating to the breach.

The final notice is available at: https://www.fca.org.uk/sites/default/files/elizabeth-anne-parry.pdf.

UK Regulator Decision Notice to Cancel Investment Business Permission

On July 15, 2016, the FCA published a Decision Notice, dated April 22, 2016, notifying KWS Wealth Management Limited of its decision to cancel their permission to carry out the regulated activity of an investment business. Mr. Smith is the sole director, shareholder and approved person at KWS. On October 15, 2015, Mr. Smith was convicted by a UK Crown Court of dishonestly failing to disclose information which he was under a legal duty to disclose. Mr. Smith was sentenced to 12 months' imprisonment, suspended for 24 months and was ordered to pay a £100 victim surcharge. The FCA had asked KWS to apply for cancellation of its permission as the FCA considered it was failing to satisfy the suitability threshold condition due to the actions or Mr. Smith, but the firm failed to comply. KWS has since referred the case to the Upper Tribunal (Tax and Chancery Chamber) for determination.

The decision notice is available at: http://www.fca.org.uk/static/documents/decision-notices/kws-wealth-management-limited.pdf.

UK Regulator Issues Final Notices Cancelling Permission to Carry Out Regulated Activities

On July 13, 2016, the FCA issued three final notices cancelling the permission to carry out regulated activities of Edge Performance 10 Limited, Mr. Mark Andrew Walker and Volpe Capital Management LLP. In each case, the FCA was not satisfied that the firm was a fit and proper person. Both firms and Mr. Walker had failed to comply with the regulatory requirement to submit a required return to the FCA. They had also failed to respond to repeated requests for the form to be submitted, thereby failing to comply with Principle 11 of the FCA's Principles for Businesses which requires firms to be open and cooperative in their dealings with the FCA. As a consequence, the FCA concluded that each had failed to satisfy the suitability Threshold Condition.

The final notice for Edge Performance 10 Limited is available at: https://www.fca.org.uk/publication/final-notices/edge-performance-limited.pdf, the final notice for Mr. Walker is available at: https://www.fca.org.uk/publication/final-notices/mark-andrew-walker.pdf and the final notice for Volpe Capital Management LLP is available at: https://www.fca.org.uk/publication/final-notices/volpe-capital-management-llp.pdf.

UK Court Finds Three Guilty of LIBOR Manipulation

On July 4, 2016, the UK's Serious Fraud Office announced that Jonathan James Mathew, Jay Vijay Merchant and Alex Julian Pabon had been convicted by a jury at Southwark Crown Court of conspiracy to defraud for manipulation of the US Dollar LIBOR. The three individuals are all former employees of Barclays Bank Plc, which was fined £59.5m by the FCA in 2012 for misconduct relating to benchmark submissions. No verdicts were reached for two co-defendants, Stylianos Contogoulas and Ryan Michael Reich, and the SFO is seeking a retrial, as announced on July 6, 2016. Sentences for the three convicted individuals were announced on July 7, 2016—Jonathan James Mathew was sentenced to four years' imprisonment, Jay Vijay Merchant was sentenced to six and a half years' imprisonment and Alex Julian Pabon was sentenced to two years and nine months' imprisonment.

The SFO's first announcement is available at: https://www.sfo.gov.uk/2016/07/04/libor-traders-submitters-found-guilty/, the SFO's second announcement is available at: https://www.sfo.gov.uk/2016/07/06/sfo-seek-retrial-two-former-libor-traders/ and the SFO's sentencing announcement is available at: https://www.sfo.gov.uk/2016/07/07/convicted-libor-manipulators-sentenced/.

Financial Crime

US Federal Banking Agencies and US Treasury Department Release Joint Fact Sheet on Foreign Correspondent Banking

On August 30, 2016, the US Department of Treasury, the US Federal Reserve Board, the US FDIC, the US OCC and the National Credit Union Administration released a joint fact sheet on foreign correspondent banking that sets forth supervisory and enforcement processes with respect to anti-money laundering and sanctions in the area of correspondent banking. Among other things, the fact sheet notes that while US depository institutions that maintain correspondent accounts for foreign financial institutions (FFIs) are not required to conduct due diligence on an FFI's customers, US depository institutions must establish appropriate, specific and risk-based due diligence policies, procedures and processes that are reasonably designed to assess and manage the risks inherent with these relationships. The release further provides that while the regulators are not adopting a zero tolerance philosophy that mandates the strict imposition of formal enforcement action regardless of the facts and circumstances of the situation, the regulators are taking the threats posed by criminals, money-launderers and terrorist financers very seriously and continue to use their authorities to safeguard the US financial system against abuse.

The fact sheet is available at: http://www.ots.treas.gov/topics/compliance-bsa/foreign-correspondent-banking-fact-sheet.pdf.

US Financial Crimes Enforcement Network Proposes a Rule Imposing Anti-Money Laundering Programs on Banks Without a Federal Regulator

On August 25, 2016, the US Financial Crimes Enforcement Network issued a notice of proposed rulemaking pursuant to Section 326 of the USA PATRIOT Act that would lay out minimum standards for anti-money laundering programs and remove the AML program exemption for banks that lack a Federal functional regulator. The proposed rule would amend 31 CFR Chapter X to broaden the application of the AML requirements, customer identification programs and beneficial ownership requirements to cover all banks, not just those subject to regulation by a Federal functional regulator, including, but not limited to, private banks, non-federally insured credit unions and certain trust companies. Comments must be submitted to FinCEN by October 24, 2016.

FinCEN's release is available at: https://www.gpo.gov/fdsys/pkg/FR-2016-08-25/pdf/2016-20219.pdf.

US Office of the Comptroller of the Currency Released a Second Notice Soliciting Comments on the Bank Secrecy Act/Anti-Money Laundering Risk Assessment System

On August 8, 2016, the OCC released a second notice soliciting comments on the expansion of the Bank Secrecy Act/Anti-Money Laundering Risk Assessment System to all OCC-supervised institutions. As noted in the original OCC proposal, published on January 4, 2016, the current information collection system applies only to community banks. Pursuant to the notice, the OCC continues to seek comments on, among other items, the accuracy of the OCC's estimate of the burden of the collection of information, and ways to enhance the quality and utility of the information to be collected, and ways to minimize the burden of the collection on respondents, including through the use of automated collection technologies. Comments on the MLR System were due by September 7, 2016.

The text of the OCC notice is available at: https://www.gpo.gov/fdsys/pkg/FR-2016-08-08/pdf/2016-18740.pdf.

US Federal Agencies Issue Proposal to Extend the Country Exposure Report

On July 20, 2016, the OCC, Department of the Treasury, Federal Reserve Board and FDIC jointly published a notice proposing to extend, with revision, the Country Exposure Report (FFIEC 009) and the Country Exposure Information Report (FFIEC 009a). The revisions would (i) require that institutions provide their Legal Entity Identifier on both reporting forms, if applicable and (ii) add Intermediate Holding Companies to the Federal Reserve Board's respondent panel. The agencies had previously requested comments on these changes. The proposed revisions have now been submitted to the Office of Management and Budget for approval. The changes would take effect September 30, 2016.

The notice is available at: https://www.gpo.gov/fdsys/pkg/FR-2016-07-20/pdf/2016-17154.pdf.

FinCEN FAQs on Customer Due Diligence Requirements

On July 19, 2016, the US Department of the Treasury's Financial Crimes Enforcement Network issued guidance in respect of its May 2016 final rule governing Customer Due Diligence requirements for financial institutions in the form of responses to frequently asked questions. In particular, FAQ #5 highlights amendments to AML program requirements by clarifying that the CDD rule creates a specific obligation for covered financial institutions to implement and maintain risk-based procedures for conducting ongoing customer due diligence, which procedures should include (i) understanding the nature and purpose of the customer relationship; and (ii) conducting ongoing monitoring to identify and report suspicious transactions, as well as to maintain and update customer information on a risk basis.

The FinCEN FAQs are available at:
https://www.fincen.gov/statutes_regs/guidance/pdf/FAQs_for_CDD_Final_Rule_(7_15_16).pdf.

US House of Representatives Passes Three Bills Aimed at Combatting Terrorist Financing

On July 11, 2016, the House of Representatives passed three bills aimed at combatting terrorist financing.

H.R. 5594, the "National Strategy for Combatting Terrorist, Underground, and Other Illicit Financing Act," would require the President, acting through the Treasury Secretary, to develop and submit to Congress annually a national strategy to combat money laundering and terrorist financing and related report. The bill requires the Treasury Secretary to consult with various heads of state and the Federal banking agencies to develop and integrate this terrorist financing strategy into the broader counter-terrorism strategy of the US.

H.R. 5602 would broaden the types of "Geographic Targeting Orders" that the Department of Treasury may order to include all funds (not just US coins or currency) involved in such transaction. Geographic Targeting Orders are orders that impose recordkeeping and reporting requirements upon financial institutions and nonfinancial trade or business groups regarding transactions for the payment, receipt or transfer of US coins or currency (or other monetary instruments as Treasury may describe in an order).

H.R. 5607, the "Enhancing Treasury's Anti-Terror Tools Act," would require the Treasury Secretary to report on certain employees regarding their role in advancing US anti-terrorism and financing interests and adds the Treasury Secretary to the National Security Council. The bill also requires the Treasury to conduct several studies including a study of the implications of transforming the Office of Terrorism and Financial Intelligence into a standalone bureau, the efficacy of requiring banking regulators to establish a pilot technical assistance program for depository institutions and credit unions that provide account services to money services businesses servicing Somali individuals and the potential impact of allowing money services businesses to share their state examinations with depository institutions and credit unions.

H.R. 5594 is available at: http://docs.house.gov/billsthisweek/20160711/HR5594.pdf, H.R. 5602 is available at: http://docs.house.gov/billsthisweek/20160711/HR5602.pdf and H.R. 5607 is available at: http://docs.house.gov/billsthisweek/20160711/HR5607.pdf.

New York State Department of Financial Services Issues Final Anti-Terrorism Transaction Monitoring and Filtering Program Regulation

On June 30, 2016, the New York State Department of Financial Services issued its Transaction Monitoring and Filtering Program Requirements and Certifications final rule, which includes several notable departures from the proposal that was issued by the DFS on December 1, 2015. The issuance of the final rule is another example of the DFS enforcing anti-money laundering and sanctions requirements applicable to banks under US federal law. Like the proposed rule, the final rule requires covered institutions to maintain a transaction monitoring program for potential Bank Secrecy Act/anti-money laundering violations and suspicious activity reporting, maintain a filtering program to prevent transactions that are prohibited by the Office of Foreign Assets Control and submit to the DFS annually a confirmation regarding compliance with the DFS' transaction monitoring and filtering program requirements.

Perhaps most significantly, and apparently in recognition of serious concerns raised by the industry during the comment period, the final rule does not include the proposed "annual certification" by an institution's chief compliance officer attesting to a covered institution's compliance with the rule, nor does it include a reference to criminal penalties for filing an incorrect or false certification. Instead, the final rule requires an annual board resolution or senior officer compliance finding confirming that the covered institution is in compliance with the regulation "to the best of the [individual's] knowledge." The final rule also introduced a "reasonably designed" standard into the transaction monitoring and filtering programs that institutions must establish.

The DFS final rule is available at: http://www.dfs.ny.gov/legal/regulations/adoptions/dfsp504t.pdf.

EU Legislation Listing High-Risk Third Countries Under the Fourth Money Laundering Directive

On September 20, 2016, a Commission Delegated Regulation identifying high-risk third countries with strategic deficiencies under the Fourth Money Laundering Directive was published in the Official Journal of the European Union, based on deficiencies identified by Financial Action Task Force.

The Regulation lists high-risk third countries which have provided a written high-level political commitment to address identified deficiencies and have developed an action plan with the FATF; countries listed: Afghanistan, Bosnia and Herzegovina, Guyana, Iraq, Lao PDR, Syria, Uganda, Vanuatu and Yemen. The Regulation identifies Iran as a high-risk third country that has provided a written high-level political commitment to address identified deficiencies and has decided to seek technical assistance in the implementation of the FATF action plan. The Regulation also identifies the Democratic People's Republic of Korea (DPRK) as a high-risk third country which presents ongoing and substantial money-laundering and terrorist-financing risks, having repeatedly failed to address identified deficiencies.

The Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.254.01.0001.01.ENG&toc=OJ:L:2016:254:TOC.

European Banking Authority Opines on Virtual Currencies and the Fourth Anti-Money Laundering Directive

On August 11, 2016, the EBA published an Opinion on the Commission's proposed amendments to the Fourth Anti-Money Laundering Directive and its application to virtual currencies. The Commission is proposing to bring custodian wallet providers (CWPs) and virtual currency exchange platforms (VCEPs) within the scope of the 4MLD so that they would, among other things, have to apply customer due diligence controls when exchanging virtual currencies for real currencies, and put in place policies and procedures to detect, prevent and report money laundering and terrorist financing.

The EBA has given several recommendations which it believes the Commission should take into account when implementing the proposed amendments. The EBA considers that the transposition deadline of the Commission's amendments to the 4MLD should be aligned with the current transposition deadline for 4MLD (June 26, 2017). Even with that timeframe, there would not be a lot of time for Member States to prepare for transposition, or for CWPs and VCEPs to implement the necessary policies and procedures. The Commission is also proposing to introduce a requirement that individuals who hold a management function, or are beneficial owners of CWPs and VCEPs, are fit and proper persons. However, the Commission does not stipulate what that test would consist of and the EBA recommends that more detail needs to be added to the proposed amendments to 4MLD. In addition, the EBA suggests that the final legislation should require CWPs and VCEPs to be licensed entities or registered entities without giving Member States scope to choose between the two.

The EBA agrees with the Commission that the scope of the Revised Payment Services Directive should not be extended to virtual currencies at this time because it will take further legal and other analysis to do so properly and the intention is to revise more quickly. The EBA raises the concern that bringing the CWPs and VCEPs within the scope of 4MLD without implementing a regulatory framework for the authorization and supervision of CWPs and VCEPs at the same time will lead to confusion and possible misrepresentations about their regulatory status. The EBA recommends that the amendments to 4MLD should enable regulators to easily exchange information in relation to VCEPs and CWPs.

The opinion is available at: http://www.eba.europa.eu/documents/10180/1547217/EBA+Opinion+on+the+Commission%E2%80%99s+proposal+to+bring+virtual+currency+entities+into+the+scope+of+4AMLD and the Commission's amendments are available at: http://ec.europa.eu/justice/criminal/document/files/aml-directive_en.pdf.

EU Guidelines on Market Soundings and Delayed Disclosure of Inside Information Finalized

On July 13, 2016, ESMA published final Guidelines on the implementation of the Market Abuse Regulation for persons receiving market soundings and on delayed disclosure of inside information. ESMA consulted on draft Guidelines in January 2016. MAR requires ESMA to issue guidelines for market sounding receivers concerning the factors that should be taken into account, when information is disclosed to them as part of a market sounding, to determine whether the information amounts to inside information. The Guidelines outline the steps that such persons should take if inside information is disclosed to them and the records that such persons should maintain to demonstrate they have complied with the obligations under MAR.

MAR requires issuers to inform the public as soon as possible of inside information which directly concerns them. ESMA's Guidelines outline the legitimate interests of issuers to delay disclosure of inside information. The Guidelines also provide a non-exhaustive indicative list on the legitimate interests of the issuer that are likely to be prejudiced by the immediate disclosure of inside information and the situations in which delay of disclosure is likely to mislead the public.

The application date for the Guidelines has not been specified, the Guidelines stipulate that they will apply 2 months from the date which translations are published.

The final Guidelines are available at: https://www.esma.europa.eu/sites/default/files/library/2016-1130_final_report_on_mar_guidelines.pdf.

European Commission Proposes Further Changes to the EU's Anti-Money Laundering and Counter Terrorism Regime

On July 5, 2016, the European Commission published proposed revisions to the EU Fourth Money Laundering Directive. The Commission is proposing to bring virtual currency exchange platforms and custodian wallet providers within the scope of 4MLD so that they would, among other things, be required to apply customer due diligence and establish place policies and procedures to detect, prevent and report money laundering and terrorist financing. The Commission is also proposing to lower, from EUR 250 to EUR 150, the thresholds for non-reloadable pre-paid payment instruments to qualify for the exemption from customer due diligence requirements. It further proposes to require all EU member states to set up automated centralized mechanisms to enable swift identification of holders of bank and payment accounts and to harmonize the regime on enhanced customer due diligence for countries that have weak AML & CFT regimes. Public access to information on beneficial ownership of companies and trusts engaged in commercial activities is also proposed and Financial Intelligence Units are to be given greater powers to request information from entities that are subject to 4MLD. Member states have until June 26, 2017 to transpose the requirements of the Fourth Money Laundering Directive into national law. However, the Commission is urging member states to bring forward transposition of 4MLD and the new proposals to January 1, 2017.

The Commission's press release is available at: http://europa.eu/rapid/press-release_IP-16-2380_en.htm, the related Factsheet is available at: http://ec.europa.eu/justice/criminal/document/files/aml-factsheet_en.pdf and the amending Directive is available at: http://ec.europa.eu/justice/criminal/document/files/aml-directive_en.pdf.

European Securities and Markets Authority Publishes Draft Technical Standards on Reporting Sanctions

On July 26, 2016, ESMA published a final report on draft ITS concerning the procedures and forms for submitting information regarding administrative and criminal investigations, sanctions and other administrative measures under MAR. The technical standards relate to requirements under MAR for national Member State regulators to submit two types of information to ESMA: (i) aggregated information on all administrative and criminal sanctions and other administrative measures imposed, and criminal investigations undertaken, under relevant provisions of MAR; and (ii) administrative and criminal sanctions and other administrative procedures that are disclosed to the public by regulators, which must be simultaneously reported to ESMA. ESMA submitted the draft technical standards to the European Commission for endorsement on July 26, 2016.

The final report is available at: https://www.esma.europa.eu/sites/default/files/library/2016-1171_final_report_mar_its_sanctions_and_measures.pdf.

Decision of European Central Bank on Disclosure of Confidential Information

On July 16, 2016, a Decision by the ECB on the disclosure of confidential information in the context of a criminal investigation was published in the Official Journal of the European Union. Pursuant to the SSM, the ECB and/or national regulators can receive requests from national criminal investigation authorities for the disclosure of confidential information created or received in the course of their supervisory tasks and responsibilities. EU law has implications for the conditions under which confidential information held by regulators within the SSM, including the ECB, may be disclosed to national criminal investigation authorities. "Confidential information" includes information covered by data protection rules, by the obligation of professional secrecy, including those in the CRD. The Decision sets out the processes and conditions under which confidential information will be provided to criminal investigation authorities. The decision entered into force on August 5, 2016.

The decision is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.192.01.0073.01.ENG&toc=OJ:L:2016:192:TOC&_sm_au_=iVVQHqKkVHqmNDV3

Final EU Technical Standards on Conditions for Buy-Back Programmes and Stabilisation to be Exempt from the Market Abuse Ban

On June 30, 2016, a Commission Delegated Regulation in the form of RTS on the conditions applicable to buy-back programmes and stabilisation was published in the Official Journal of the European Union. MAR provides exemptions from the prohibition of market abuse for trading in own shares in buy-back programmes and trading in securities or associated instruments for the stabilisation of securities. The RTS set out the conditions that must be met before those exemptions will apply, including disclosure and reporting obligations, conditions for trading and trading restrictions. The RTS applied from July 3, 2016.

The RTS on Exemptions for Buy-Back Programmes and Stabilisation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.173.01.0034.01.ENG&toc=OJ:L:2016:173:TOC.

Final EU Technical Standards on Disclosure of Inside Information and Delaying Disclosure of Inside Information

On June 30, 2016, a Commission Delegated Regulation in the form of ITS on the means for appropriate public disclosure of inside information and for delaying the public disclosure of inside information was published in the Official Journal of the European Union. MAR requires an issuer to inform the public as soon as possible of information which directly concerns the issuer. An issuer may delay disclosing the information in certain circumstances, for example, if immediate disclosure is likely to prejudice the legitimate interests of the issuer. The ITS set out the technical means for issuers to publicly disclose inside information and the means for delaying the public disclosure of inside information. The ITS also requires an issuer bank or investment firm that wishes to delay disclosure of inside information to notify its regulator in writing to obtain the regulator's consent to the delay. The ITS applied from July 3, 2016.

The ITS on Disclosing or Delaying Disclosure of Inside Information is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.173.01.0047.01.ENG&toc=OJ:L:2016:173:TOC.

EU Level 2 Legislation on Market Soundings Published

On June 17, 2016, two EU Delegated Regulations containing technical standards on the requirements relating to market soundings under MAR were published in the Official Journal of the European Union. MAR applied from July 3, 2016 except for those concepts that depend on the entry into effect of MiFID II, which will apply from January 3, 2018.

The RTS is on the arrangements, systems and procedures for market participants disclosing inside information while conducting market soundings. The European Commission adopted the RTS on May 17, 2016. There are no changes between the adopted RTS and the final published RTS.

MAR provides that when a disclosing market participant discloses inside information during a market sounding, the disclosure will fall within a safe harbor, provided that certain conditions are met. The RTS require disclosing market participants to establish procedures which describe the way in which market soundings are conducted, to provide certain information to the person receiving the market sounding, including, where possible, an estimate as to when the information will cease to be inside information, and to keep records of the persons who have received market soundings.

In addition, a disclosing market participant must, once he assesses that the information has ceased to be inside information, provide the receiving individual with the following information: (i) the identity of the disclosing market participant; (ii) the date and time of the market sounding; (iii) the identification of the transaction subject to the market sounding; (iv) confirmation that the disclosed information has ceased to be inside information; and (v) the date on which the information ceased to be inside information. However, there is no precise time set for such cleansing to take place. The requirements are in line with the approach adopted by ESMA following its consultation on the proposed RTS. ESMA took the view that it would not be possible to establish procedures for a situation where a transaction failed or was abandoned, because the information might remain inside information.

MAR requires disclosing market participants to keep records of the communications of information during the course of market soundings. The ITS provide for the format and template of the records of communications between a disclosing market participant and the persons receiving the market soundings.

The RTS on market soundings is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0960&from=EN and the ITS on records of market soundings is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0959&from=EN.

You may like to view our client note, "EU Market Abuse Regulation – Implications for Non-EU Issuers with Securities Traded on an EU Market" which is available at: http://www.shearman.com/~/media/Files/NewsInsights/Publications/2016/06/EU-Market-Abuse-Regulation-Implications-for-Non-EU-Issuers-with-Securities-Traded-on-an-EU-Market-CM-06232016.pdf.

EU Technical Standards on Preventing Market Abuse and Reporting Suspicious Transactions Published

On June 17, 2016, an EU Delegated Regulation containing RTS on preventing market abuse and reporting suspicious transactions under the MAR was published in the Official Journal of the European Union. MAR will apply from July 3, 2016 except for those concepts that will be introduced by the revised Market in Financial Instruments Directive and the Market in Financial Instruments Regulation, which will apply from January 3, 2018.

The RTS impose requirements on operators of trading venues and persons professionally arranging or executing transactions to monitor for and report insider dealing or market manipulation. A template suspicious transaction and order report (known as a STOR) will need to be used for reporting suspicious transactions. The RTS also impose a requirement on operators of trading venues and persons professionally arranging or executing transactions to provide adequate training for their staff involved in monitoring detection and identification of orders and transactions that might be insider dealing or market manipulation, including for staff involved in processing orders and transactions.

The RTS on preventing market abuse and reporting suspicious transactions is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0957&from=EN.

EU Secondary Legislation under the Market Abuse Regulation on Investment Recommendations Published

On June 17, 2016, an EU Delegated Regulation containing RTS on investment recommendations under MAR was published in the Official Journal of the European Union. MAR came into force on July 3, 2016 except for those concepts that will be introduced by MiFID II, which will apply from January 3, 2018.

The RTS set out the technical arrangements for objective presentation of investment recommendations and for disclosure of particular interests or conflicts of interest. The RTS require that a firm producing a recommendation must disclose its identity, as well as the names and identities of the individuals involved in preparing a recommendation. Firms that disseminate recommendations will be subject to similar disclosure obligations and must also indicate on a recommendation the date on which it was first disseminated. Firms producing recommendations must also disclose relevant interests or conflicts of interest.

The RTS on investment recommendations is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0958&from=EN.

European Securities and Markets Authority Opines on Disclosure of Inside Information by Emission Allowance Market Participants

On June 17, 2016, ESMA published its Opinion on the proposed requirements for Emission Allowance Market Participants to disclose inside information under MAR. ESMA's Opinion is in response to the European Commission's notification that it intended to endorse, subject to certain amendments, ESMA's ITS on the public disclosure of inside information by issuers and EAMPs and on the means for delaying public disclosure of inside information. The European Commission is concerned that the ITS will lead to EAMPs being subject to duplicative disclosure requirements under the EU Regulation on wholesale energy market integrity and transparency, known as REMIT. The Commission's view is that the ITS should deem the REMIT disclosure requirements sufficient for the purposes of disclosure requirements under MAR, so as to avoid imposing duplicative requirements on EAMPs.

MAR requires issuers and EAMPs to inform the public as soon as possible of information which directly concerns the issuer or EAMP. However, such disclosure may be delayed if certain criteria are met, including that the delay protects a legitimate interest of the issuer, that the information remains confidential and that procedures are put in place to ensure this is the case.

ESMA does not agree with the European Commission's position and has not proposed revised draft ITS for consideration. ESMA's view is that if EAMPS were not obliged to make the required disclosure under MAR, then there would be no active disclosure or dissemination of inside information and the information would not be marked as inside information. If the requirements were removed, ESMA believes that investor protection would be decreased.

ESMA recently consulted on draft Guidelines for issuers and EAMPs on delaying the disclosure of inside information and for persons receiving a market sounding. ESMA's proposed Guidelines include a non-exhaustive list of the legitimate interests of an issuer or EAMP that may be prejudiced by immediate disclosure of inside information and situations in which delay of disclosure is likely to mislead the public. The final Guidelines are expected to be published in Q3 2016.

ESMA's Opinion is available at: https://www.esma.europa.eu/press-news/esma-news/esma-issues-opinion-inside-information-disclosure-under-market-abuse-regulation, the final draft ITS is available at: https://www.esma.europa.eu/regulation/trading/market-abuse and ESMA's draft Guidelines are available at: https://www.esma.europa.eu/press-news/esma-news/esma-consults-mar-guidelines-regarding-market-soundings-and-delayed-disclosure.

UK Regulator Introduces Financial Crime Reporting Obligations

On July 29, 2016, the FCA published final rules on financial crime reporting, which will introduce obligations for banks, large investment firms, building societies, mortgage lenders, large electronic money institutions, certain large consumer credit firms, life insurers and retail investment and mortgage intermediaries. Relevant firms will be required to provide details annually on, among other things, the jurisdictions and types of customers as well as the number of suspicious activity reports to the FCA. The reporting obligation will only apply to a firm's business that is subject to the Money Laundering Regulations 2007. The FCA is introducing the new requirement so that it can adopt a more risk-sensitive supervisory approach. Due to the feedback it received to its consultation on the implementation timeline, the FCA has extended the remittance deadline by 60 days so that firms with an accounting year end of December 31 will need to submit the data by late March the following year. The FCA is also allowing firms to complete the first Financial Crime Report on a best-endeavors basis.

The FCA's Policy Statement and final Rules are available at: http://www.fca.org.uk/static/documents/policy-statements/ps16-19.pdf.

UK Financial Conduct Authority Published Final Rules and Guidance Implementing the New EU Market Abuse Regime

On June 30, 2016, the FCA published a Policy Statement setting out its final text of the changes to the Decision Procedure and Penalties Manual and the Enforcement Guide to implement MAR. MAR introduced a revised civil market abuse regime and applied directly across the EU from July 3, 2016, except for those concepts that stem from the revised Markets in Financial Instruments package that will be introduced in January 2018. The FCA has amended and updated its rules and guidance to bring them in line with MAR. The changes, amongst other things, amend the scope of the FCA's powers to impose financial penalties, public censure and sanctions for breaches of MAR or any of its underlying legislation. The new powers include the power to prohibit an individual from carrying out a management function or dealing in financial instruments on their own account. The amended rules and guidance applied from July 3, 2016.

The Policy Statement is available at: https://www.fca.org.uk/publication/policy/ps16-18.pdf.

UK Regulations Implementing the New EU Market Abuse Regulation Published

On June 30, 2016, the final UK Regulations implementing the new EU MAR in the UK were published. MAR applied directly across the EU from July 3, 2016 except for those concepts that stem from the MiFID II package, which will be introduced in January 2018. The Regulations set out, amongst other things, how notifications and applications should be made to the FCA, when explanations for delaying public disclosure of inside information must be provided to the FCA by issuers and amendments to the FCA's powers to monitor for market abuse and enforce any breaches of MAR, including imposing financial penalties or administrative sanctions such as prohibitions on trading financial instruments. The Regulations also amend certain provisions of the UK laws on auctioning for emission allowances from January 2018. The Regulations came into force on July 3, 2016.

The Regulations are available at: http://www.legislation.gov.uk/uksi/2016/680/pdfs/uksi_20160680_en.pdf.

OECD Publishes Draft Report on the Liability of Legal Persons for Foreign Bribery

On August 24, 2016, the OECD Working Group on Bribery published its draft report for consultation on the liability of legal persons for foreign bribery. By "legal persons," the paper refers to organizations (e.g. corporations) that have legal rights and legal obligations, such as that under the Anti-Bribery Convention to respect laws prohibiting foreign bribery. The parts of the Convention concerning the "liability of legal persons" thus aim to ensure that business organizations, not just individuals, can be held responsible for foreign bribery.

The objective of the draft report is to map the features of the 41 Anti-Bribery Convention Parties' systems of liability of legal persons. The OECD Working Group has mapped these systems based on roughly 200 monitoring reports. The Working Group is seeking feedback on areas such as the nature of liability, the legal basis for liability, the types of entities covered, the standard of liability and jurisdictional issues. The Working Group is seeking feedback by October 28, 2016.

The draft report is available at: http://www.oecd.org/daf/anti-bribery/Liability-Legal-Persons-Foreign-Bribery-Stocktaking.pdf.

Financial Market Infrastructure

US Federal Reserve Board Adopts Rating System to Supervise Financial Market Infrastructures

On August 26, 2016, the US Federal Reserve Board issued a notice that it had adopted the "ORSOM" rating system for its review of FMIs over which the Federal Reserve Board has jurisdiction, including financial market utilities designated as systemically important by the Financial Stability Oversight Council. The ORSOM system judges FMIs on five categories which the Federal Reserve Board noted highlight the issues FMIs face: Organization, Risk management, Settlement, Operational risk and IT, and Market support, access and transparency. The Federal Reserve Board's notice also specifies particular regulations and guidance that would be examined under each ORSOM category. The rating scale runs from 1, strong, to 5, unsatisfactory, in each category, with the FMI receiving a 1-5 aggregate overall rating as well.

The Federal Reserve Board's release is available at: https://www.gpo.gov/fdsys/pkg/FR-2016-08-26/pdf/2016-20517.pdf.

European Central Bank TARGET2-Securities Migration Status Updated

On September 12, 2016, the European Central Bank announced that the TARGET2-Securities migration weekend of wave 3 was successfully completed. The TS2 system is a single pan-European platform for securities settlements using central bank money. Wave 3 involved the migration of five new securities depositories to the TS2 system. As at September 12, 2016, this included Euroclear Belgium, Euroclear France, Euroclear Nederland, VP Lux (Luxembourg) and VP Securities (Denmark). Wave 4 is currently planned for February 6, 2017. The ECB noted that following the completion of Wave 3, T2S is now processing about 45% of the total expected transaction volume to be achieved after the end of full migration in 2017.

The update is available at: http://www.ecb.europa.eu/paym/t2s/html/index.en.html.

EURIBOR Categorized As a Critical Benchmark under EU Legislation

On August 12, 2016, a Commission Implementing Regulation establishing a list of critical benchmarks used in financial markets under the Benchmark Regulation was published in the Official Journal of the European Union. The Benchmark Regulation provides for different categories of benchmarks depending on the risks involved, imposing additional requirements on benchmarks considered to be critical, including the power of national regulators to mandate, under certain conditions, contributions to or the administration of a critical benchmark. The Commission Implementing Regulation stipulates that the Euro Interbank Offered Rate is a critical benchmark on the basis that it is important for credit loans and mortgages in the EU. EURIBOR is the first benchmark to be listed. The Commission Implementing Regulation entered into force on August 13, 2016.

For the most part, the Benchmark Regulation will apply from January 1, 2018. Certain provisions, giving powers to ESMA to prepare draft technical standards and to the Commission to adopt delegated legislation, applied from June 30, 2016.

The Commission Implementing Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.217.01.0001.01.ENG&toc=OJ:L:2016:217:TOC.

European Central Bank Revises Eurosystem Oversight Policy Framework

On July 15, 2016, the ECB published a revised version of its Eurosystem Oversight Policy Framework, which describes the role of the Eurosystem in oversight of FMIs. Eurosystem promotes the safety and protection of FMIs and acts as the central bank of issues in EU and international cooperative arrangements for securities and derivatives clearing and settlement systems. FMI includes payment systems, and clearing and settlement systems. The revised version of the current framework, which builds on the edition published in September 2015, takes into account the significant regulatory and institutional changes and market developments that have affected Eurosystem's oversight function since July 2011. This includes the revised and enhanced harmonized international standards and EU law such as the CPSS-IOSCO Principles for Financial Market Infrastructures.

The oversight policy is available at: http://www.ecb.europa.eu/pub/pdf/other/eurosystemoversightpolicyframework201607.en.pdf?4cb84eb3183f0bb2c71bc3509af6ffe3.

EU Regulation on Benchmarks Finalized

On June 29, 2016, the final EU Regulation on Benchmarks was published in the Official Journal of the European Union. The Benchmark Regulation has been introduced in response to the numerous instances of benchmark manipulation that have emerged in recent years. In addition, the Benchmark Regulation is intended to harmonize across the EU the rules that have implemented the IOSCO Principles for Financial Benchmarks and Principles for Oil Price Reporting Agencies.

The Benchmark Regulation sets out the authorization and registration requirements for benchmark administrators, including third country entities, requirements for governance and control of administrators, provides for different categories of benchmarks depending on the risks involved and imposes additional requirements on benchmarks considered to be critical, powers of national regulators to mandate, under certain conditions, contributions to or the administration of a critical benchmark.

For the most part, the Benchmark Regulation will apply from January 1, 2018. However, certain provisions, giving powers to ESMA to prepare draft technical standards and to the Commission to adopt delegated legislation, have applied from June 30, 2016.

The Benchmark Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.171.01.0001.01.ENG&toc=OJ:L:2016:171:TOC.

Financial Stability Board Reports on Risks Posed by Central Counterparties and the CCP Workplan

On August 16, 2016, the FSB published a progress report on its CCP workplan. The progress report provides an update on implementation of a workplan agreed on by the FSB, the Basel Committee, the CPMI and IOSCO (the Group) in April 2015. The workplan focuses on the resilience, recovery planning and resolvability of CCPs and coordinating the roles of each organization in achieving a new international framework for CCPs.

The CPMI and IOSCO reported that significant work has been undertaken to address the resilience and recovery issues of CCPs. CPMI and IOSCO have published two reports highlighting the shortfalls and gaps in the financial risk management and recovery practices of certain CCPs, and expect to conduct a follow-up targeted review in 2017 of the progress of those CCPs. The FSB reported that it had undertaken a comprehensive analysis of the suitability of the resolution powers and tools in different distress scenarios and identified elements of such strategies for certain CCPs, and has also published a discussion note (for comment by October 17, 2016) on effective resolution strategies and plans for CCPs. The FSB expects to publish more specific guidance in early 2017. The progress report notes the degree of interconnectedness in central clearing, and the resulting systemic implications of this. The Group has collected data for around 20 CCPs to identify and quantify interdependencies between CCPs and their direct members, indirect members, investment counterparties, liquidity providers and other financial institutions, and will report the findings in early 2017. The progress report also touches on the impact of various regulatory initiatives on the incentives to centrally clear. In particular, there is concern that the Basel III leverage ratio framework's treatment of the potential future exposure of a transaction is defective, as it does not take into account the collateral posted as initial margin by the client. The Basel Committee has consulted on revisions to the ratio and a new methodology for measuring a derivatives potential future exposure. The Basel Committee reported that it expects to finalize its revisions to the design and calibration of the Basel III leverage ratio framework by the end of 2016.

The progress report is available at: http://www.fsb.org/wp-content/uploads/Progress-Report-on-the-CCP-Workplan.pdf.

Financial Services

US Federal Reserve Bank Presidents Testify before US House of Representatives

On September 7, 2016, US Federal Reserve Bank Presidents Esther George (Kansas City) and Dr. Jeffrey Lacker (Richmond) testified before the US House of Representatives Financial Services Subcommittee on Monetary Policy and Trade, in a hearing entitled "Federal Reserve Districts: Governance, Monetary Policy, and Economic Performance." Addressing the appearance of conflicts of interest arising from the presence of bankers on Reserve Bank boards of directors, President George noted that the Federal Reserve Board in Washington, D.C. is ultimately responsible for bank supervision and that Reserve Bank directors do not participate of bank supervisory matters. President Lacker noted that Reserve Bank directors have no formal role in crafting banking regulations. Each president also addressed the structure of the Federal Reserve System in the context of the role played by monetary policy in the economy.

Details regarding the hearing are available at: http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=400969.

US Federal Banking Agencies Release Results of Shared National Credit Review

On July 29, 2016, the US Federal Reserve Board, the FDIC and the OCC released the results of the Shared National Credit (SNC) review. The review showed that the level of adversely rated assets remained higher than in previous periods of economic expansion, raising the concern that future losses and problem loans could rise considerably in the next credit cycle. The elevated level of risk observed during the recent SNC examination stems from the high inherent risk in the leveraged loan portfolio and growing credit risk in the oil and gas portfolio.

Notwithstanding the finding that credit risk in the SNC portfolio remains elevated, the agencies noted improved underwriting and risk management practices related to the most recent leveraged loan originations, as underwriters continue to better align practices with regulatory expectations and as investor risk appetite moderates away from transactions at the lower end of the credit spectrum.

The SNC review found that US banks held the greatest volume of SNC commitments at 44.9 percent of the portfolio, followed by foreign banking organizations at 33.6 percent and then non-bank entities. The share of credits rated "special mention" and worse that were held by non-bank entities fell from 68 percent in 2015 to 60.8 percent this year, though overall such commitments increased from $372.6 billion in 2015 to $421.4 billion in 2016. The agencies' uniform loan classification standards and examination manuals define these risk-rating classifications.

According to the SNC review, leveraged lending was the primary contributor to the overall "special mention" and "classified" rating, with leveraged loans making up 63.3 percent of all SNC "special mention" and "classified" commitments. Oil and gas lending was the primary driver for the increase in the overall "special mention" and "classified" rating, representing 12.3 percent of the SNC portfolio overall and including $77 billion in "classified" credits compared with $38.2 billion in 2015. The SNC review found that firms are originating minimal levels of "non-pass" loans and examiners noted continued progress toward full compliance with the underwriting and risk management expectations for leveraged loans, which were published by the agencies in December 2013.

The SNC review is available at: https://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160729a1.pdf.

US Federal Deposit Insurance Corporation Requests Comment on Bank Appeals Guidelines and Third-Party Lending Guidance

On July 29, 2016, the US FDIC requested comments on updates to its guidelines for institutions to appeal certain material supervisory determinations, as well as comments on draft guidance regarding third-party lending. The two items are part of a package issued by the FDIC to improve the transparency and clarity of the FDIC's supervisory policies and practices, and to ensure that institutions have clear and fair avenues to pursue when there are differences of opinion regarding supervisory matters.

Supervisory Matters

The FDIC proposed to amend its Guidelines for Appeals of Material Supervisory Determinations so that institutions have additional avenues of redress for these determinations and for greater consistency with the appeals process of the other federal banking agencies. The proposed supervision appeals guidelines expand the circumstances under which banks may appeal a material supervisory determination. Comments on the supervision appeals guidelines will be accepted until 60 days after they are published in the Federal Register.

Other related documents in the FDIC's package of updated policies and procedures include a statement to guide FDIC staff in developing and reviewing supervisory guidance and a statement on the development and communication of supervisory recommendations to financial institutions. Further, the FDIC is reissuing a Financial Institution Letter originally issued in 2011 to reinforce the FDIC's expectations for communications between the agency and bankers and to encourage bankers to raise concerns and provide feedback related to FDIC supervisory matters.

Third-Party Lending

The FDIC also issued examination guidance specifically with respect to third-party lending. The draft guidance supplements the FDIC's Guidance for Managing Third-Party Risk and applies to any third-party arrangements of an institution, including lending. This guidance expands upon the FDIC's existing guidance by setting forth safety and soundness and consumer compliance measures FDIC-supervised institutions should follow when lending through a business relationship with a third party. Furthermore, it outlines the risks that may be associated with third-party lending as well as the expectations for a risk-management program, supervisory considerations and examination procedures related to third-party lending. On August 4, 2016, the FDIC extended the comment period for the proposed guidance on third-party lending to October 27, 2016.

The FDIC press release, which includes links to the proposed guidance and related statements described above, is available at: https://www.fdic.gov/news/news/press/2016/pr16061.html.

US Office of Financial Research Releases Biannual Update of Risks to Financial Stability

On July 25, 2016, the US Office of Financial Research issued its biannual update of the risks to US financial stability. The report finds that, overall, risks to US financial stability remain in the medium range but have been pushed higher by the UK vote to exit the EU. The OFR notes that, "[t]he result surprised financial markets and was a negative shock to investor confidence. It introduces months or years of uncertainty about the rules governing the UK's investment, financing, and trade relations . . . . Because the UK economy and especially the UK financial system are highly connected with the rest of Europe and the United States, severe adverse outcomes in the UK could pose a risk to US financial stability." The OFR report observes that the key vulnerabilities addressed in the OFR's 2015 Financial Stability Report issued last December also persist, adding that: (i) credit risks in US nonfinancial businesses and in some major foreign markets are still elevated; (ii) long-term US interest rates have declined to ultra-low levels, which can motivate excessive risk-taking and borrowing, and many key foreign interest rates are now negative, with uncertain consequences for financial stability; and (iii) uneven resilience persists in the US financial system.

The OFR Financial Stability Monitor is available at: https://financialresearch.gov/financial-stability-monitor/files/FSM_072516_FINAL.pdf.

US Office of the Comptroller of the Currency Releases Its Semiannual Risk Perspective for Spring 2016

On July 11, 2016, the OCC released its Spring 2016 Semiannual Risk Perspective, reflecting bank financial data as of December 31, 2015. The report identifies credit, strategic, operational and compliance risks as top concerns from a safety-and-soundness perspective. Specifically, strategic risk remains high as banks struggle to execute their strategic plans and faces challenges in growing revenue, and credit risks have increased as banks search for yield in an environment of strong loan growth and easier underwriting standards. With respect to operational risk, greater cyber security threats and increased reliance on third-party service providers have caused operational risk to remain high. Further, as banks struggle to comply with new rules, such as the integrated mortgage disclosure requirements, and the mandates of the Bank Secrecy Act, compliance risk management also continues to pose challenges. Risk issues identified in the Spring 2016 report are largely consistent with those identified in the Fall 2015 Report.

The OCC Semiannual Risk Perspective for Spring 2016 is available at: http://www.occ.gov/publications/publications-by-type/other-publications-reports/semiannual-risk-perspective/semiannual-risk-perspective-spring-2016.pdf.

US Federal Financial Institutions Examination Council Releases Revisions to the Consolidated Reports of Condition and Income

On July 1, 2016, the Federal Financial Institutions Examination Council approved revisions to the Consolidated Reports of Condition and Income (Call Report) that will take effect on September 30, 2016 and March 31, 2017. The revisions were proposed by the three US federal banking agencies in September 2015 (see FIL-39-2015, dated September 18, 2015), and included certain burden-reducing changes, a number of instructional clarifications and certain new and revised Call Report data items (e.g., a new item on “dually payable” deposits in foreign branches of US banks). After considering the comments received on the proposal, the FFIEC and the banking agencies are proceeding with most of the proposed reporting changes, with some modifications.

The Call Report revisions are part of an initiative launched by the FFIEC in December 2014 to identify potential opportunities to reduce burden associated with Call Report requirements for community banks, such as the costs arising from the Call Report preparation process.

A summary of the revisions is available at: https://www.fdic.gov/news/news/financial/2016/fil16044.pdf.

US Federal Reserve Board Releases Annual Determination of Aggregate Consolidated Liabilities

On June 30, 2016, the US Federal Reserve Board released its annual determination of the aggregate consolidated liabilities of financial companies as required by section 622 of the Dodd-Frank Act, which prohibits a financial company from combining with another company if the resulting company’s liabilities would exceed 10 percent of the aggregate consolidated liabilities of all financial companies.

Financial companies subject to the limit include insured depository institutions, bank holding companies, savings and loan holding companies, foreign banking organizations, companies that control insured depository institutions and nonbank financial companies designated for Federal Reserve Board supervision by the FSOC.

As of July 1, 2016, aggregate consolidated liabilities equal $21,786,571,865,000, which is the average of the year-end financial sector liabilities of the preceding two years and will be the measure of aggregate consolidated liabilities for purposes of section 622 of the Dodd-Frank Act for the time period from July 1, 2016 through June 30, 2017.

The Federal Reserve Board announcement is available at: http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160630a1.pdf.

US Federal Deposit Insurance Corporation Finalizes Updates to Frequently Asked Questions on Brokered Deposits

On June 30, 2016, the US FDIC finalized updates to its Frequently Asked Questions regarding identifying, accepting and reporting brokered deposits. In general, brokered deposits are treated less favorably than nonbrokered deposits for various supervisory purposes, including a prohibition on accepting such deposits if an insured depository institution's capital falls below certain thresholds under the Prompt Corrective Action (PCA) framework.

In November 2015, the FDIC released for comment proposed updates to the FAQs that were originally issued in January 2015. After consideration of the comments received, the agency retained a majority of the proposed updates, with certain clarifications and the addition of new FAQs.

The FAQs are based on the statute, regulation and explanations of the requirements for identifying and accepting brokered deposits provided to the industry through published advisory opinions and the FDIC's Study on Core Deposits and Brokered Deposits issued in July 2011, as well as on comments received since publication of the FAQs. The FAQs provide plain language information about categorizing brokered deposits.

Key updates since the FAQs were issued in January 2015 address matters related to: (i) business professionals and deposit referral programs; (ii) deposits gathered through "dual hatted," "dual" and "call center" employees (as explained in the FAQs) or contractors; (iii) deposits underlying government-sponsored prepaid or debit card programs; (iv) whether certain non-maturity deposits are brokered; and (v) actions an insured depository institution should take if it holds certain brokered deposits and falls below "well capitalized" for PCA purposes.

The updated FAQs are available at: https://fdic.gov/news/news/financial/2016/fil16042.pdf.

US Financial Stability Oversight Council Votes to Rescind Designation of GE Capital as a Systemically Important Financial Institution

On June 29, 2016, the FSOC announced the rescission of its designation of GE Capital Global Holdings LLC (GE Capital) as a systemically important financial institution (SIFI). The FSOC unanimously decided that GE Capital no longer meets the standards for SIFI designation. Therefore, GE Capital will not be subject to enhanced prudential standards or supervision by the Board of Governors of the Federal Reserve System.

FSOC originally designated GE Capital as a SIFI in 2013 after identifying a number of key concerns, including the company's reliance on short-term wholesale funding and its leading position in a number of funding markets. Since then, GE Capital made strategic changes to decrease its total assets by over 50%, reduce its interconnectedness with large financial institutions and have more stable funding. In order to become less systemically important, it has undergone a corporate reorganization, a series of divestitures and a transformation of its funding model.

The public explanation of the basis for the FSOC's rescission is available at: https://www.treasury.gov/initiatives/fsoc/designations/Documents/GE%20Capital%20Public%20Rescission%20Basis.pdf and the FSOC press release is available at: https://www.treasury.gov/initiatives/fsoc/news/Documents/FSOC%20Announces%20Rescission%20of%20Nonbank%20Financial%20Company%20Designation.pdf.

US Federal Reserve Board Governor Powell Delivers Speech on the Impact of Brexit

On June 28, 2016, US Federal Reserve Board Governor Jerome Powell delivered remarks to the Chicago Council on Global Affairs, highlighting the impact of Brexit on the outlook for the US economy.

Governor Powell voiced concern that the Brexit vote has the potential to create new headwinds for economies around the world, including the United States. He noted that while it may be "far too early to judge the effects of the Brexit vote," it will be important to assess implications for the US economy, and for the stance of policy to foster continued progress towards the objectives of maximum employment and price stability in the United States.

Governor Powell noted that for some time, the principal risks to the US labor market recovery and economic growth have been from abroad. Due to the high and continuously appreciating trade-weighted value of the US dollar, the economy inevitably "imports" trading partners' weak economic performances and financial volatility. Powell stated that to successfully contain the impact of the British referendum, the Federal Reserve Board is "prepared to provide dollar liquidity through existing swap lines" with central banks to address pressures in global funding markets. Powell also noted that while financial conditions have "tightened" since the Brexit vote, markets have continued to function in an "orderly" manner and the US financial markets remain resilient.

Governor Powell's speech is available at: http://www.federalreserve.gov/newsevents/speech/powell20160628a.pdf.

US Supreme Court Denies Writ of Certiorari in *Madden v. Midland Funding*

On June 27, 2016, the US Supreme Court elected not to review a Second Circuit decision that found debt purchased from a national bank by a non-national bank entity to be subject to state usury laws.

In 2015, the Second Circuit found that Midland Funding, a debt purchaser assignee of a national bank, would not be permitted to rely on National Bank Act provisions that permit national banks to charge interest rates at the rate of the state where the national bank is located. In its petition for certiorari, Midland argued that the National Bank Act's "valid when issued" doctrine shields any debt that it purchases from a national bank from state usury and consumer protection laws.

Madden originally opened the credit card account in question in 2005, but was later unable to pay her balance of $5,000. In 2008, her debt was deemed uncollectable and was sold to Midland, absolving any national bank of any interest in the amount. Following Midland's demand of 27 percent interest on the balance, Madden sued Midland for violation of usury and other debt collection laws in November 2011.

In March 2016, the Supreme Court invited the Solicitor General's Office to file a brief expressing the United States' views on Madden. In the submission, the Solicitor General recommended that the US Supreme Court deny certiorari because of, among other things, the absence of a circuit split and the possibility that the appellants may still prevail in the underlying dispute after the case is remanded to federal district court. This submission, however, made clear that the Solicitor General disagrees with the Second Circuit's decision restricting non-bank loan purchasers from benefiting from state usury law preemption under the National Bank Act.

The Supreme Court order is available at: http://www.supremecourt.gov/orders/courtorders/062716zor_4fbi.pdf.

The Solicitor General's brief is available at: http://www.scotusblog.com/wp-content/uploads/2016/06/midland.invite.18.pdf and the petition for a writ of certiorari is available at: http://www.scotusblog.com/wp-content/uploads/2016/03/Madden-Midland-Cert-Petition-11-10-15.pdf.

US Financial Stability Oversight Council Releases Sixth Annual Report

On June 21, 2016, the FSOC released its 6th annual report to Congress. The FSOC reports annually to Congress on a range of issues, including significant financial market and regulatory developments, potential emerging threats to the financial stability of the United States and the activities of the FSOC. The report also makes recommendations to promote market discipline, maintain investor confidence and enhance the integrity, efficiency, competitiveness and stability of US financial markets.

This year, in particular, the report focused on cyber security, as well as risks associated with asset management products and activities, capital and liquidity, central counterparties and reforms of wholesale funding markets. The report also made recommendations about promoting market discipline, maintaining investor confidence and enhancing the competitiveness and efficiency of the US financial markets.

The report is available at:
https://www.treasury.gov/initiatives/fsoc/news/Documents/FSOC%202016%20Annual%20Report%20Press%20Release.pdf.

European Commission Calls for Acceleration of Capital Markets Union

On September 14, 2016, the European Commission published a Communication calling for implementation of the Capital Markets Union to be accelerated. The CMU is part of the third pillar of the Commission Investment Plan for Europe. The CMU Action Plan was published in September 2015. It outlined a program for implementation by 2019 and set out changes to strengthen EU capital markets. The Commission stated that due to the changing political context in the EU, it would be taking forward priority areas to complete the CMU and undertaking a mid-term review in 2017. Priorities include proposals to reduce differences in European insolvency regimes, the removal of withholding tax barriers, simplification of the EU personal pension products, improving the use of European savings and increasing the performance of the EU economy. The Commission called for European Parliament and Member States to do everything within their power to deliver the measures proposed under the CMU Action Plan as soon as possible.

The Commission press release is available at: http://europa.eu/rapid/press-release_IP-16-3001_en.pdf, the Communication is available at: http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-601-EN-F1-1.PDF and the Action Plan is available at: http://ec.europa.eu/finance/capital-markets-union/docs/building-cmu-action-plan_en.pdf.

Final EU Technical Standards on Access to Regulated Information Published

On August 31, 2016, a Commission Delegated Regulation supplementing the Transparency Directive outlining RTS on access to regulated information was published in the Official Journal of the European Union. The RTS require ESMA to facilitate the creation of the European Electronic Access Point, a web portal which provides a single point of access at EU level to information about issuers (including annual reports and major shareholding notifications) stored by officially appointed mechanisms in each member state.

The web portal is to be accessed through ESMA's website. The security and integrity of metadata on regulated information exchanged between official appointed mechanisms and the EEAP is to be achieved through the use of Hypertext Transfer Protocol. To assist users in finding information on the EEAP, the RTS require particular search functions to be available, such as the name of issuers who provided the regulated information. The RTS also lay down requirements on OAMS, such as the requisite technologies, support and maintenance to be provided. The RTS enters into force on September 20, 2016, with articles on unique identifiers used by OAMs and requirements for common lists and classification of regulated information applying from January 1, 2017.

The RTS on access to regulated information is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1437&from=EN.

European Commission Reports on the Appropriateness of Credit Claims as Collateral

On June 29, 2016, the European Commission published a report on the appropriateness of the inclusion of credit claims as collateral in the Financial Collateral Directive, including the appropriateness of the restriction on member states to require any formal act for the creation of or validity of such collateral unless the formal act was necessary for the purposes of perfection, priority, enforceability or admissibility in evidence against the debtor or third parties. The Commission assessed the laws that member states implemented across the EU and concluded that, although there is not full harmonization on implementation of the option, the option to include credit claims as collateral should not be removed from the Financial Collateral Directive without further work being undertaken to assess the related impacts. In addition, the Commission considers that action taken within the Capital Markets Union to remove barriers to cross-border clearing and settlement will likely improve the current uncertainty in cross-border exchange of collateral.

The report is available at: http://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-430-EN-F1-1.PDF.

UK Regulator Consults on Qualification Standards for Financial Advisers

On September 12, 2016, the FCA published a consultation paper on proposed updates to the current appropriate qualification examination standards. Individuals within regulated firms that, for example, advise on securities, derivatives or retail investment products, are required to have appropriate qualifications. The FCA will seek to amend the appropriate exam standards to ensure that exam content is current and reflects the knowledge that the FCA considers necessary for individuals to perform their roles competently. The proposed changes do not alter the FCA's policy on appropriate qualification requirements, introduce new appropriate qualification requirements or change the level of achievement required to meet the FCA rules on appropriate qualifications. The FCA is also proposing amendments to the Training and Competence Sourcebook of its Handbook to clarify how to read and use the appropriate qualification tables as well as seeking views on a standalone equity release qualification which relates to the UK mortgage market and the provision of advice on alternative sale and lease back arrangement (home reversions) accounts. Responses to the consultation are due by December 13, 2016.

The consultation paper is available at: https://www.fca.org.uk/sites/default/files/cp16-24.pdf.

UK Regulator Launches Review of Crowdfunding Rules

On July 8, 2016, the FCA launched a call for input into its review of the implementation of its crowdfunding rules. The FCA implemented rules regulating FCA-authorized firms operating crowdfunding services on April 1, 2014 and committed to reviewing these rules in 2016. The FCA is seeking views on changes in the market since the rules were implemented, emerging risks for consumers, and areas where the FCA might consider adapting its rules.

In particular, for loan-based crowdfunding, the FCA is considering whether the standards for financial promotions, due diligence and prudential regulation are appropriate, whether firms should be required to disclose more detail to consumers, and whether firms should be required to assess investor knowledge and experience of the relevant risks. For investment-based crowdfunding, the FCA would like views on how conflicts are managed by operators of the platforms, whether due diligence requirements need to be strengthened, and whether to mandate the disclosure of risk warnings for non-readily realizable securities held within Innovative Finance ISAs. Responses were due by September 8, 2016. The FCA will consider the information it receives in response to the call for input as well as during other areas of the review and decide whether it is appropriate to consult on proposed rule amendments.

The call for input is available at: https://www.fca.org.uk/publication/call-for-input/call-input-crowdfunding-rules.pdf.

G20 Leaders Publish Communiqué

On September 6, 2016, the G20 Leaders published the Communiqué from the Hangzhou Summit. The G20 Leaders reiterated their commitment to finalizing the remaining elements of the financial sector reform agenda, including, for example, finalization of Basel III by the end of 2016, full implementation of the OTC derivatives reforms and removing legal and regulatory obstacles to the reporting of OTC derivatives trades, developing effective cross-border resolution regimes and implementing the total loss absorbing capacity (TLAC) standard. The G20 Leaders also noted the importance of monitoring emerging systemic risks including those derived from shadow banking and asset management. For the continued protection of the global financial system, and with a focus on anti-money laundering, counter-terrorism and tax evasion, the G20 have asked the Financial Action Task Force and the Global Forum to prepare initial proposals by October 2016 to improve implementation of transparency standards in the international financial system, including the collection of beneficial ownership information of legal persons and legal arrangements and international information sharing arrangements.

The Communiqué is available at: http://www.g20.org/English/Documents/Current/201609/t20160906_3395.html.

International Progress Report on the G20 Data Gaps Initiative Published

On September 2, 2016, the FSB and the IMF published a progress report on the Second Phase of the G20 Data Gaps Initiative (DGI-2). Following the financial crisis, the FSB and the IMF published the first Data Gaps report in 2009 which identified information gaps that had hindered effective policy responses and made proposals for improving data collection. DGI-2 focuses on implementing the collection and dissemination of information for policy use and the preparation of further recommendations to take account of the evolving needs of policymakers. The progress report sets out steps taken on the implementation of DGI-2 as well as the four thematic reviews to be undertaken in 2017 which will cover sectoral accounts and balance sheets, a more comprehensive group of financial soundness indicators, data sharing and Global Systemically Important Insurers.

The progress report is available at: http://www.fsb.org/wp-content/uploads/Second-phase-of-the-G20-Data-Gaps-Initiative-DGI-2-First-Progress-Report.pdf.

FinTech

US Comptroller of the Currency Highlights Framework for Evaluating Responsible Innovation

On June 23, 2016, US Comptroller of the Currency Thomas J. Curry delivered remarks as part of the US OCC's Forum on Responsible Innovation, highlighting the OCC's efforts to develop a framework for identifying and evaluating responsible innovation. Comptroller Curry defined a responsible innovation as one that meets the changing needs of consumers, businesses and communities, is consistent with sound risk management and aligns with the company's business strategy. Within the context of a federal banking system, a responsible innovation is one that would help institutions achieve their public purpose without compromising their safety or soundness. During his remarks, Comptroller Curry made references to the OCC White Paper on responsible innovation that was released in March 2016.

In addition to Comptroller Curry's remarks, the forum brought together thought leaders from banks, financial technology companies, academia, community and consumer groups and the OCC to discuss developments, opportunities and challenges related to financial innovation. The forum examined questions such as whether financial technology companies and banks could coexist and learn from one another and what the impact of innovation on consumers and communities may be.

Comptroller Curry's remarks are available at: http://www.occ.gov/news-issuances/speeches/2016/pub-speech-2016-74.pdf.

UK Regulator Publishes Findings on RegTech Call for Input

On July 20, 2016, the FCA published a Feedback Statement on its call for input on implementation of future RegTech in the UK. The FCA defines RegTech as a subset of FinTech with a focus on technologies that may facilitate the delivery of regulatory requirements more efficiently and effectively than existing capabilities. The Feedback Statement summarizes industry responses to the FCA's call for input, outlines the FCA's approach to RegTech for 2016/17 and the activities it will prioritize. The FCA intends to increase engagement and collaboration with the RegTech community, noting that it has restricted potential to assist the industry in defining standards and guidelines to provide certainty for firms purchasing new technology capabilities. The FCA aims to improve compliance and reduce the overall costs of regulation by encouraging innovation development and the adoption of new technologies that help and improve the interface between the regulator and regulated firms.

The feedback statement is available at: http://www.fca.org.uk/static/fca/documents/feedback-statements/fs-16-04.pdf.

Funds

European Securities and Markets Authority Advice on Extension of AIFMD Passport to Non-EU AIFMs and AIFs

On July 19, 2016, ESMA published its advice to the European Parliament, Council and Commission on the extension of the AIFMD passport to non-EU Alternative Investment Fund Managers and AIFs in twelve non-EU countries: Australia, Bermuda, Canada, Cayman Islands, Guernsey, Hong Kong, Japan, Jersey, Isle of Man, Singapore, Switzerland, and the United States. ESMA has reviewed whether there are significant obstacles with regard to investor protection, competition, market disruption and the monitoring of systemic risk.

For Canada, Guernsey, Japan, Jersey and Switzerland, ESMA concluded that there are no significant obstacles impeding the application of the passport regime. For Hong Kong and Singapore, there are no significant obstacles impeding the application, but ESMA noted that both Hong Kong and Singapore have regimes which facilitate the access of UCITS from only certain EU Member States to retail investors in their territories. With regard to Australia, there are no significant obstacles impeding the application of the AIFMD passport, provided that the Australia Securities and Investments Committee extends to all EU Member

States the "class order relief," an exemption from certain requirements of the Australian regulatory framework, which is currently only available for UK and German fund managers.

For the United States, there were no significant obstacles regarding investor protection and the monitoring of systemic risk which would impede the application of the AIFMD passport to the United States. However, ESMA raised concerns around the competition and market disruption criteria of its assessment, in that extension of the AIFMD passport could result in an unlevel playing field between EU and non-EU AIFMs for funds marketed by managers to professional investors which involve a public offering. For Bermuda and the Cayman Islands, ESMA stated that it could not give definitive advice with regard to the criteria on investor protection and effectiveness of enforcement as both countries are currently implementing new regulatory regimes for alternative funds. Finally, in relation to the Isle of Man, ESMA found it difficult to assess whether the criteria of investor protection was met as there was no AIFMD-like regime. The advice will now be considered by the European Parliament, Council and Commission.

ESMA's advice is available at: https://www.esma.europa.eu/sites/default/files/library/2016-1140_aifmd_passport_1.pdf.

UK Government Assesses Its Implementation of UCITS IV

On June 30, 2016, HM Treasury published a Command Paper on the post-implementation review of the Undertakings for Collective Investments in Transferable Securities Regulations 2011, which implement the revised EU UCITS IV. The Command Paper sets out the Government's assessment of the regulatory regime for UCITS as implemented by the 2011 Regulations, including an assessment of the extent to which the 2011 Regulations meet the objectives, the impact of the 2011 Regulations and whether there are any unintended consequences of the 2011 Regulations.

UCITS IV amended the UCITS III regime, amongst other things, to eliminate barriers to cross-border functioning of UCITS funds, facilitate the merger of funds and create master/feeder structures. The Government's review of the UCITS framework highlights that there are still barriers to fund mergers and master/feeder structures, restricting the extent of anticipated economies of scale. However, many of the issues relate to the content of the EU legislation and not to the UK's implementation of it. The Government expects there to be a UCITS VI and will continue to engage with the EU authorities to develop the EU UCITS regime, including by encouraging the alignment of the UCITS regime with that of the Alternative Investment Fund Managers framework, to reduce what it perceives to be as unnecessary burdens on the industry.

The Command Paper is available at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/533626/UCITS_web_final.pdf.

International Consultation on Good Practices for Fees and Expenses Collective for Investment Schemes

On August 25, 2016, IOSCO published a final report outlining good practices on fees and expenses for collective investment schemes. The report is aimed only at CISs whose shares or units are permitted to be sold to retail investors. IOSCO states that appropriate information about fees and expenses should be available so that an investor can take them into account when making an investment decision rather than relying purely on past performance. IOSCO's Committee on Investment Management reviewed existing practices with respect to fees and expenses in collective investment schemes in 2004 and again in 2015, with good practices published as a result of the review in 2004. The latter review reflected a wider range of regulatory approaches towards markets at different stages of maturity, as well as taking account more recent developments in its member jurisdictions, in light of the natural evolution of best practices since the 2004 report as regulators adapted their approach.

The final report follows an FSB consultation published in June 2015 and sets out 23 good practices, which includes those previously published in 2004 with some enhancements and additions. This includes defining permitted and prohibited costs and how new or increased fees should be approved and/or notified to investors. The good practices also require more detail to be provided to investors on the calculation of performance-related fees and additional summarized information on key elements of fees and expenses. Further enhancements have also been made to good practices on the use of electronic media for disclosing information about fees and expenses and ways in which funds should manage and disclose conflicts of interest in the use of soft commission arrangements.

The report is available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD543.pdf.

International Consultation on Good Practices for the Termination of Investment Funds

On August 18, 2016, IOSCO published a report outlining a proposed set of good practices on the voluntary termination of investment funds. The decision to terminate an investment fund can have a significant impact on investors, in terms of the costs associated with such an action or the ability of investors to redeem their holdings during the termination process. Therefore, IOSCO's objective is to develop a set of good practices for the termination of collective investment schemes and other fund structures such as commodity, real estate and hedge funds, which take into account investors' interests during the termination process.

IOSCO is proposing good practices on disclosure by investment funds to investors at the time of investment, so that an investment fund would provide information as to the general circumstances in which a fund can be terminated and the extent to which investor approval or consent is required to effect termination. Where a fund elects to merge its assets with another fund (often managed by the same responsible entity), as an alternative to termination, the responsible entity should clearly communicate the decision to investors. To the extent possible, they should only offer investors the option to merge where the receiving investment has similar investment objectives, policies and risk profile to the terminating investment fund. IOSCO also proposes that the responsible entity ensures that during the termination process appropriate and adequate information about the termination process is communicated to all investors. The consultation additionally seeks to address specific issues for commodity, real estate, hedge funds and private equity funds, who are more likely to hold illiquid or hard-to-value assets. Responses to the consultation are due by October 17, 2016.

The consultation is available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD542.pdf.

International Securities Body Sets Priorities for Addressing Data Gaps in the Asset Management Industry

On June 22, 2016, IOSCO published a statement setting out its priorities for addressing certain data gaps in the asset management industry. Although recent initiatives have led to better data collection by securities regulators, mostly focused on the hedge fund industry, IOSCO considers that more can be done to enhance the data collected and its use. In particular, a key concern for IOSCO is the identification of systemic risks. IOSCO intends to prioritize data relating to open-ended regulated collective investment schemes, separately managed accounts and alternative funds in addition to developing consistent definitions across jurisdictions, particularly to collate data on leverage. These priorities will act as a roadmap for IOSCO's activities in this area going forward. IOSCO will continue with its bi-annual surveys of hedge fund managers and their advisors to support the G20 reforms to mitigate the risks associated with hedge funds.

IOSCO's statement is available at: https://www.iosco.org/library/pubdocs/pdf/IOSCOPD533.pdf.

MiFID II

European Securities and Markets Authority Publishes Initial Proposals on the Trading Obligation Under MiFIR

On September 20, 2016, ESMA published a discussion paper on the trading obligation for derivatives under the Markets in Financial Instruments Regulation. The trading obligation is applicable to classes of derivatives that: (i) have been declared subject to the clearing obligation under EMIR, (ii) are admitted to trading on at least one trading venue (a regulated market, multilateral trading facility, organized trading facility or a third country equivalent trading venue) and (iii) are sufficiently liquid. ESMA is required to prepare RTS setting out which derivatives (or a subset of derivatives) that have been declared subject to the clearing obligation (currently comprising only certain interest rate swaps and credit default swaps) will also be subject to the trading obligation and the date on which the obligation will take effect. ESMA is seeking feedback on its approach to implementing the trading obligation for derivatives, including its application to certain types of counterparties and the possibility of the obligation being phased in, and on its initial assessment of some classes of derivatives that might become subject to the obligation. The discussion paper also sets out how the trading obligation has been implemented in other jurisdictions, such as the US, Japan, Switzerland, Mexico, Argentina and China.

Responses to the discussion paper are due by November 21, 2016. ESMA aims to publish a consultation paper in the first quarter of 2017 with draft RTS to be submitted to the European Commission expected by September 2017. ESMA has six months from the date that a derivative has been declared subject to the clearing obligation to prepare, consult on and submit draft RTS to the Commission on the trading obligation for those derivatives. However, implementation of the trading obligation has been affected by the MiFID II delay and the earliest that a trading obligation could apply from is January 3, 2018. ESMA considers that it is better to finalize the RTS for the first trading obligations as close as possible to the application date of MiFID II so that it assesses the up-to-date data on liquidity for those derivatives that have already been declared subject to the clearing obligation.

The discussion paper is available at: https://www.esma.europa.eu/press-news/esma-news/esma-consults-trading-obligation-derivatives.

European Commission Adopts Technical Standards Detailing the Reporting of Transactions Obligations Under MiFIR

On July 28, 2016, the European Commission adopted a Commission Delegated Regulation in the form of RTS supplementing MiFIR. MiFIR will, from January 3, 2018, require an investment firm to report complete and accurate details of transactions in financial instruments no later than the close of the following business day to its national regulator. One of the purposes of the reporting obligation is for national regulators to undertake market surveillance, including to monitor for market abuse.

The adopted RTS specifies which transactions are subject to the reporting obligation and stipulates when an investment firm will be considered to have executed a transaction for the purposes of the MiFIR reporting obligation. For example, the purchase of a financial instrument or entering into of a derivative contract can constitute an acquisition and the sale of a financial instrument and the closing out of a derivative contract would constitute a disposal. Execution of a transaction can include, among other things, performance of services that have resulted in a transaction such as the reception and transmission of orders for one or more financial instruments or executed orders on behalf of clients. The fields to be reported are set out in the annex to the adopted RTS. There are some exclusions to the reporting obligation, such as securities financing transactions under and contracts arising exclusively for clearing or settlement purposes.

To comply with the reporting obligation, firms will need to identify themselves using their legal entity identifiers, identify their client using the client's LEI, identify any individual referred to in the report (using specific formats provided for in the adopted RTS) and will also have to identify any individual or algorithm that made the investment decision. A transaction report must include information about any change in the position of a firm or its client and short sales will need to be flagged.

The adopted RTS must still be approved by the European Parliament and the Council of the European Union and be published in the Official Journal before entering into force. The adopted RTS will apply, for the most part, from January 3, 2018, in sync with the implementation of MiFID II.

The adopted RTS on the reporting obligation is available at: https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-4733-EN-F1-1.PDF.

The Annexes are available at: https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-4733-EN-F1-1-ANNEX-1.PDF.

European Commission Adopts Technical Standards on Organizational Requirements for Investment Firms Engaged in Algorithmic Trading

On July 19, 2016, the European Commission adopted a Commission Delegated Regulation in the form of RTS specifying the organizational requirements of investment firms engaged in algorithmic trading. The adopted RTS supplement MiFID II by specifying the systems, procedures, arrangements and controls to be put in place and maintained by investment firms to address the risks that may arise in financial markets due to the increased use and development of trading technology. The adopted RTS also outlines requirements of systems and controls for investment firms acting as general clearing members (those not involved with algorithmic trading).

The adopted RTS outline the general requirements for investment firms to monitor its trading systems and algorithms with formalized governance arrangements that set out clear lines of accountability and effective procedures for the communication of information within the investment firm. A firm's compliance staff will be required to have at least a general understanding of how algorithmic trading systems work within the firm as well as continuous contact with those in the firm with technical knowledge of the firms algorithmic trading systems and algorithms, including individuals with access to the "kill functionality."

The adopted RTS outline requirements for the resilience of investment firm algorithmic trading systems, including testing and compliance procedures for their pre-deployment, deployment and post deployment. The adopted RTS also specifies the systems and controls for firms acting as general clearing members, providing such clearing services to its clients. Clearing firms will need to undertake due diligence assessments of prospective clearing clients, set out and communicate to their clearing clients trading and position limits so that they can manage their own risks and publish the conditions of offering clearing services. The adopted RTS also sets minimum specifications for direct access trading systems and requires due diligence to be carried out on a prospective client to ensure that it meets the requirements of the adopted RTS (which include diligence on the prospective client's governance) and the rules of the trading venue to which access is being offered.

The content and format of reporting by firms engaged in high-frequency algorithmic trading is set out in the annexes to the adopted RTS. Such firms will be required annually to self-assess the nature of their business and consider such factors as their regulatory status and role in the market. A validation report based on the self-assessment would then be subject to approval by the firm's senior management. An investment firm is then required to remedy any deficiencies in the validation report. The adopted RTS must still be approved by the European Parliament and the Council of the European Union and be published in the Official Journal before entering into force. The adopted RTS will apply from January 3, 2018, which is when MiFID II comes into effect.

The adopted RTS on algorithmic trading requirements is available at: https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-4478-EN-F1-1.PDF and the Annex is available at: https://ec.europa.eu/transparency/regdoc/rep/3/2016/EN/3-2016-4478-EN-F1-1-ANNEX-1.PDF.

Amendments to Transaction Reporting Under the Markets in Financial Instruments Regulation Proposed

On July 1, 2016, ESMA submitted two amendments to the European Commission on the final draft RTS on transaction reporting obligations under the MiFIR. The draft RTS were first submitted on September 25, 2015. The final draft RTS outlines transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other financial instruments such as bonds and derivatives.

MiFIR requires investment firms to report complete and accurate details of executed transactions in financial instruments to regulators as quickly as possible, but no later than the close of the following working day. The proposed amendments to the RTS relate to the use of national client identifiers for natural persons to be used in such transaction reports. The first of the proposed amendments require that "CONCAT" codes be used for identifying persons of German nationality instead of a "personal identity card number" or "national passport number". The second proposed amendment relates to the incorrect translation into English of an Icelandic identity scheme.

The ESMA press release is available at: https://www.esma.europa.eu/press-news/esma-news/esma-proposes-two-amendments-natural-person-identifiers-under-mifid-ii.

MiFID II Implementation Delayed to 2018

On June 30, 2016, EU legislation postponing the implementation date of the MiFID II package was published in the Official Journal of the European Union. The MiFID II package will now formally not apply until January 3, 2018 instead of 2017. The postponement includes all of the technical standards and national laws although member states will need to transpose the requirements into national laws by July 3, 2017. In addition to the provisions delaying the implementation date, certain substantive amendments have also been made to the original texts of MiFID II. For example, Securities Financing Transactions, as defined in the new Securities Financing Transactions Regulation, will be excluded from the pre- and post-trade transparency obligations under MiFID II and there are revisions to specifically require the public disclosure of bid and offer prices for package orders.

The amending legislation also includes a delay to the application of certain provisions of MAR. MAR refers to definitions and concepts in MiFID II. Accordingly, references in MAR relating to organised trading facilities (a new type of trading venue introduced by MiFID II), SME growth markets and emission allowances will not apply until MiFID II enters into application. MAR otherwise applied from July 3, 2016. Similarly, the application of certain provisions of the Central Securities Depositories Regulation will also be delayed. CSDR includes rules on settlement discipline which refer to eligibility criteria for SME growth markets found in MiFID II. To ensure legal certainty, the current MiFID provisions will remain effective in relation to the CDSR until MiFID II enters into force.

The amending Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.175.01.0001.01.ENG&toc=OJ:L:2016:175:TOC, the amending Directive is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.175.01.0008.01.ENG&toc=OJ:L:2016:175:TOC and our client note, "MiFID II Implementation Delayed to 2018", is available at: http://www.shearman.com/~/media/Files/NewsInsights/Publications/2016/06/MiFID-II-Implementation-Delayed-to-2018-FIAFR-06212016.pdf.

European Securities and Markets Authority Updates Its Waivers for Pre-Trade Transparency Requirements Under MiFID I

On June 20, 2016, ESMA published an updated document on its approach to waivers to certain pre-trade transparency requirements under the current MIFID. MiFID I allows national regulators to grant waivers to regulated markets and multilateral trading facilities from certain pre-trade transparency requirements for shares based on the market model or the type and size of orders. ESMA first published the document in August 2015, setting out examples of pre-trade waivers under MiFID I. The document is intended to assist national regulators in ensuring that their supervisory practices are in line with ESMA's opinions and to assist firms by clarifying the content of the MiFID I requirements.

ESMA's document is available at: https://www.esma.europa.eu/sites/default/files/library/2011-241h_esma_opinions_cesr_positions_on_pre-trade_waivers_0.pdf.

HM Treasury Consults on Definition of Financial Advice

On September 20, 2016, HM Treasury published a consultation paper on amending the definition of regulated advice under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 to bring it in line with the definition of "investment advice" set out in MiFID I. The consultation follows the Financial Advice Market Review, conducted by HM Treasury and the FCA last year, which assessed how consumers could access advice on their finances more easily. The FAMR recommended that the government should consult on amending the definition of regulated advice in accordance with the MiFID definition, to the effect that only advice which makes a personal recommendation would be regulated. The consultation proposes a revised definition and seeks feedback on the costs and benefits of this change and any potential risks by November 15, 2016.

The consultation page is available at: https://www.gov.uk/government/consultations/amending-the-definition-of-financial-advice-consultation/amending-the-definition-of-financial-advice-consultation.

UK Regulator Publishes Second Consultation Paper on Implementation of MiFID II

On July 29, 2016, the FCA published a second consultation paper on implementation of MiFID II and the associated proposed changes to the FCA Handbook. The first consultation paper, published on December 15, 2015, related to issues associated with the FCA's regulation of the secondary trading of financial instruments. The proposals in the second consultation paper are relevant to many different firms, including investment banks, inter-dealer brokers, stockbrokers, investment advisers, corporate finance firms, trading venues, investment managers and prospective Data Reporting Services Providers. The consultation paper includes full implementation of relevant parts of MiFID II, consistent with FCA pronouncements that roll-out of MiFID II will not be affected by the Brexit vote.

With regard to commodity derivatives, the FCA has proposed a new chapter of the Market Conduct Sourcebook to set out guidance and directions on the MiFID II regime of position limits, position management controls, position reporting and other reporting, notification and information requirements for commodity derivatives contracts.

With regard to supervision, the FCA has proposed making changes to SUP to make clear that firms are required to notify the FCA of breaches of requirements to provide information, to introduce transitional provisions concerning the revocation of the MiFID implementing regulation and to update passporting provisions.

The FCA has also proposed to amend the prudential sourcebook following introduction of the new investment service of operating an Organized Trading Facility. Presumably, the Financial Services and Markets Act (Regulated Activities) Order 2001 will need amending to introduce this new activity. The exemption for a so-called "local" firm and certain references to MiFID which are no longer required will be deleted.

With regard to the Senior Management Arrangements, Systems and Controls (SYSC), the FCA has proposed new changes to transpose the MiFID II provisions relating to management bodies, conflicts of interest and organizational requirements. The FCA has also proposed a new section in SYSC on whistleblowing to implement, alongside existing domestic obligations, the MiFID II requirements, as well as a new section to cover the extension of the remuneration and performance management of sales staff rules to certain non-MiFID firms. The FCA has noted that MiFID II and CASS are broadly in alignment and consequently most of the new MiFID II requirements have already been implemented.

On the topic of complaint handling, the FCA has proposed a new section in DISP to reflect the enhanced complaint handling rules under MiFID II which will extend to a wider range of clients than currently.

The FCA has noted that a third consultation paper will be issued to consult on changes to the Conduct of Business Sourcebook, material on product governance, and further changes to the Perimeter Guidance Manual. It is envisaged that a single policy statement dealing with the topics covered by the consultation papers will be published in 2017. Responses to the consultation paper are due by October 28, 2016.

The first FCA MiFID II consultation paper is available at: https://www.fca.org.uk/static/documents/consultation-papers/cp15-43.pdf and the second consultation paper is available at: http://www.fca.org.uk/static/documents/consultation-papers/cp16-19.pdf.

FICC Markets Standards Board Proposes Standard for Binary Options in the Commodities Markets

On July 22, 2016, the UK's FICC Markets Standards Board published a proposed standard for binary options in the commodities markets. Binary options are options that pay out either a fixed amount or nothing, depending on the performance of the underlying commodity over an agreed period of time. The draft standard sets out the characteristics of a type of transaction used by participants in the commodities markets and the expected behaviors of wholesale market participants that enter into them. Although not legally binding, it will apply to all FMSB member firms (currently just over 30 firms) on a global basis once in its final form.

This is the second standard that the FMSB has published recently. Last month, it published a draft standard for Reference Price Transactions for the fixed income markets. The FMSB was established in June 2015 in response to the Fair and Effective Markets Review conducted by HM Treasury, the Bank of England and the FCA. The FMSB's objective is to improve conduct in the wholesale FICCmarkets. Responses to the consultation are due by October 14, 2016.

The draft standard is available at: http://www.femr-mpp.co.uk/wp-content/uploads/2016/07/16-07-FMSB_CommoditiesBinaryOptions_TransparencyDraft.pdf.

UK Regulator Reports on Thematic Review on Equity Market Dark Pools

On July 21, 2016, the FCA published the findings of its thematic review of the UK equity marketplace, focusing on dark pools and broker crossing networks. The FCA examined promotional activity and the identification and management of conflicts of interest by dark pool operators, as well as issues of governance, oversight and controls. The report is based on the definition of "dark pool" as a trading venue with no pre-trade transparency, such that all orders, prices and volumes are anonymous.

Overall, the FCA found that users welcomed the additional liquidity, lower risk of information leakage and the potentially beneficial impact on pricing and costs that dark pools offered. The FCA also noted that investment banks have made significant improvements in addressing the promotion and management of conflicts of interest around dark pools, although more could be done in such areas as platform design and comprehensiveness of monitoring. Operators could improve transparency by providing clear detail about the design and operation of the dark pool to users. When interacting with investment banks, operators could describe how their broker crossing network interacts with other components of their electronic trading platform. The FCA considers that operators could improve monitoring activity in their pools by focusing on operational integrity, best execution, client preferences and unwanted trading activity such as market abuse and should also do more to identify and manage conflicts of interest. The FCA also highlighted that some users could take steps to improve their own understanding of various pools through due diligence.

The FCA will be writing to all users and operators of dark pools who participated in the review with feedback based on its findings and, where necessary, requests to remedy issues. The FCA expects firms to continue to prepare for implementing the changes that will be required by the secondary legislation (which is not yet finalized) prepared under MiFID II, which will have a significant impact on firms, in particular their broker crossing networks, and their existing or proposed business plans.

The thematic review is available at: http://www.fca.org.uk/static/documents/thematic-reviews/tr16-05.pdf.

FICC Markets Standards Board Proposes Reference Price Transactions Standard

On June 30, 2016, the FMSB published a draft standard for Reference Price Transactions for the fixed income markets. This is the first standard that the FMSB has published since it was established in June 2015 in response to the Fair and Effective Markets Review conducted by HM Treasury, the Bank of England and the FCA. The FMSB's objective is to improve conduct in the wholesale FICC markets. Feedback on the proposed standards were due by September 8, 2016. The standards serve as a supplement to applicable law, rules and regulation and seek to deal with traders' conflicts of interests where hedging entered into by the liquidity provider could influence the reference price transaction. Once finalized, the standard will apply to all FMSB member firms (just over 30 firms to date) on a global basis.

The proposed standard is available at: http://www.femr-mpp.co.uk/wp-content/uploads/2016/06/16-06-FMSB_ReferencePriceTransactions_FIMarkets_TransparencyDraft.pdf.

Payment Services

European Banking Authority Consults on Proposed Draft Technical Standards Supplementing the Payment Accounts Directive

On September 22, 2016, the EBA published proposed draft technical standards on fee terminology and disclosure documents under the Payment Accounts Directive. The PAD aims to assist consumers to understand the fees of payment service providers and to make informed decisions about which account is most suitable for customers, by setting common standards for PSPs across EU Member States, harmonizing the terminology used by PSPs and introducing fee information templates. The EBA is responsible for preparing draft Regulatory Technical Standards setting out the Union standardized terminology for the most common services linked to a payment account, as well as Implementing Technical Standards on the standardized presentation format of the fee information document (FID) and the statement of fees (SoF). The EBA's consultation paper sets out its proposed

RTS and ITS, the options it has considered and the rationale for choosing the proposed requirements and examples of completed FIDs and SoFs. Responses to the consultation are due by December 22, 2016.

The consultation paper is available at: http://www.eba.europa.eu/documents/10180/1586509/EBA-CP-2016-13+Consultation+Paper+on+draft+RTS+and+ITSs+under+PAD.pdf.

European Banking Authority Consults on Minimum Amount of Professional Indemnity Insurance for Authorization

On September 22, 2016, the EBA published a consultation paper proposing draft Guidelines on how to stipulate the minimum monetary amount of professional indemnity insurance required for authorization under the Payment Services Directive II. The PSD2 entered into force on January 12, 2016, and will apply from January 13, 2018. The PSD2 recognizes new types of payment services that have emerged in the area of internet payments, such as payment initiation services and account information services. The PSD2 sets out the criteria on how to stipulate the minimum monetary amount of professional indemnity insurance or other comparable guarantee to be held by regulated firms. The draft Guidelines also set out the criteria, indicators, calculation methods and a formula that regulators should use when granting authorization or registration. The consultation paper explains the EBA's proposal for the use of a formula to calculate the minimum monetary amount of professional indemnity insurance or any comparable guarantee, when and how the lowest tier (the default value) should be used when calculating the monetary amount, provides details on indicators for the criteria set out in the PSD2 and the proposed methodology for some of the indicators. Responses to the consultation are due by November 30, 2016.

The consultation page is available at: http://www.eba.europa.eu/news-press/calendar?p_p_id=8&_8_struts_action=%2Fcalendar%2Fview_event&_8_eventId=1586016.

European Banking Authority Consults on Draft Standards for Payment Service Providers

On August 12, 2016, the EBA published a consultation paper on draft RTS specifying the requirements of strong customer authentication and secure communication under the revised Payment Services Directive (known as PSD2). PSD2, which will apply from January 13, 2018, requires payment service providers to apply strong customer authentication measures where the payer: (i) accesses its payment account online; (ii) initiates an electronic payment transaction; and (iii) carries out any action through a remote channel which may imply a risk of payment fraud or other abuses.

The proposed draft RTS supplement this requirement by outlining a framework for the protection of consumers and payment service providers. The proposed draft RTS outline requirements for: (i) strong customer authentication and exemptions from those requirements; (ii) security measures to protect the confidentiality and the integrity of the payment service users' personalized security credentials; and (iii) common and secure open standards of communication between account servicing payment service providers, Payment Initiation Services providers, Account Information Services providers, payers, payees and other payment service providers, including imposing an obligation on payment service providers to ensure that data on personalized security credentials are masked when displayed and are not readable in their full text during all phases of the authentication procedure. Responses to the consultation are due by October 12, 2016.

The consultation paper is available at: www.eba.europa.eu/documents/10180/1548183/Consultation+Paper+on+draft+RTS+on+SCA+and+CSC+%28EBA-CP-2016-11%29.pdf.

UK Payment Systems Regulator Designates BACS Current Account Switching Service as an Alternative Arrangement

On September 14, 2016, the UK Payment Systems Regulator published a decision designating the Current Account Switch Service operated by BACS Payment Schemes Limited as an alternative arrangement under the Payment Accounts Regulations 2015. This follows an application from BACS to the PSR on June 9, 2016, for the Current Account Switch Service to be designated as an alternative arrangement pursuant to the PARs. The PARs make provision for the switching of a consumer's payment account to a new account at the consumer's request. Switching services must meet certain requirements, unless the PSR designates the service as an alternative arrangement. In order to be designated as an alternative arrangement, the scheme must meet certain criteria set out in the PARs, such as clearly being in the interests of consumers.

The Decision is available at: https://www.psr.org.uk/sites/default/files/media/PDF/CASS-designation-statement-September-2016.pdf.

UK Payment Systems Regulator Reports on Bank Ownership of Payment Infrastructure

On July 28, 2016, the PSR published its final report on its market review into the ownership and payment infrastructure competitiveness in the UK. The final report follows the PSR's interim report which was published in February 2016. The PSR has concluded that there is currently no effective competition in the provision of UK payments central infrastructure services for Bacs, FPS and LINK (notwithstanding general satisfaction by operators and PSPs in terms of value for money, quality of service and innovation received from providers). This is partly because the operators have not periodically run competitive procurement processes or sufficiently tested the market when reproducing core infrastructure services. This means that the incumbent provider, VocaLink, has faced limited competitive pressure and minimal incentives to provide more efficient and innovative services.

The final report outlines potential remedies for issues of competition and the provision of infrastructure services for Bacs, FPS and Link. The remedies are proposed as a package consisting of the following measures: (a) undertaking competitive procurement exercises, such as issuing guidance and requiring operators of payment service providers to follow a prescribed set of processes, (b) implementing enhanced interoperability, including a common international messaging standard, for Bacs and FPS, and divestment by the four largest shareholders in VocaLink. The PSR is seeking initial feedback on the remedies ahead of its full consultation later this year. Comments on the proposed remedies are due by September 22, 2016. A decision on the proposed remedies is expected in early 2017.

The Final Report is available at: https://www.psr.org.uk/sites/default/files/media/PDF/MR1523-infrastructure-market-review-final-report.pdf.

UK Regulator Reports on Credit Card Market

On July 26, 2016, the FCA published its final report outlining findings from its credit card market study. The FCA credit card market study was launched in November 2014. The purpose of the study was to analyze the credit card market and determine whether it is working in the interest of consumers and to develop remedies to improve the situation if needed. Interim findings were published in November 2015 with potential remedies mooted for certain issues such as the frequent withdrawal of firms' promotional offers and the fees associated with a single month's missed payment. The final report summarizes feedback received on the interim report and outlines the FCA's package of remedies.

The FCA concluded that market competition works fairly well for most consumers, although it is working less well for higher-risk consumers as they have a limited choice of available products and providers.

Remedies include combinations of FCA rules, guidance and industry agreements. The FCA notes that wider work is being taken forward by the industry and government on open access to data and use of application programming interfaces to further open up access to account-level data from January 2018, which should make it easier for consumers to search with greater accuracy for products that match their individual circumstances. On higher-risk credit card issues, the FCA has concerns about the affordability assessments by certain firms, and will address these concerns through supervisory activity with the firms in question. The FCA intends to consult later in 2016 on borrowing and repayment measures to give consumers more control over their credit limits. The FCA also intends to consult on proposals for a rule requiring firms to identify early signs of debt problems and to intervene accordingly.

The report is available at: https://www.fca.org.uk/static/documents/market-studies/ms14-6-3-credit-card-market-study-final-findings-report.pdf.

UK Payment Systems Regulator Consults on Applications for Access to Certain Regulated Payment Systems

On July 21, 2016, the PSR published a consultation on draft guidance on the exercise of some of its powers under the Financial Services (Banking Reform) Act 2013. The PSR has powers to require a payment service operator or indirect access provider to grant payment service providers access to certain regulated payment systems, and can vary the terms of existing access. The PSR may only use its powers if an application is made to it. The PSR is proposing guidelines on how it will assess those applications and the process it will follow. The purpose of the draft guidance is to assist businesses in determining what they should do if they are in dispute over the provision of access to regulated payment systems or if there is a dispute over the charges for the use of services provided by regulated payment systems.

The PSR has proposed a substantive test to determine whether access (including the terms of such access) has been impeded "more than is necessary" to safeguard against specific risks. The test would apply to both direct and indirect access applications, and in a range of different market and competitive contexts. The proposed guidelines would apply to participants in the payment systems currently designated by HM Treasury: Bacs, Cheque and Credit (C&C), CHAPS, Faster Payments Scheme (FPS), LINK, Northern Ireland Cheque Clearing (NICC), MasterCard and Visa. Responses to the consultation are due by September 16, 2016.

The consultation paper is available at: https://www.psr.org.uk/sites/default/files/media/PDF/CP164-approach-to-applications-under-s56-s57-FSBRA.pdf.

The draft guidance is available at: https://www.psr.org.uk/sites/default/files/media/PDF/draft-guidance-s56-s57-FSBRA.pdf.

UK Payment Systems Regulator Final Report on Market Review Into Supply of Indirect Access to Payment Systems

On July 21, 2016, the PSR published its final report on its market review into the supply of indirect access to payment systems. Banks, building societies and other payment service providers rely on payment systems to transfer money between accounts. The PSR commented that provision of access to payment systems is essential in enabling effective supervision of and innovation in payments. Indirect access to payment systems occurs when one payment service provider relies on another payment service provider to provide access. The PSR's final conclusions remain largely unchanged from its interim report.

The PSR concluded that generally, competition in the supply of indirect access appears to be producing some good outcomes. For example, large indirect payment service providers (IPSPs) have a number of options to access payments systems, and there is a reasonable level of overall satisfaction with the quality of the indirect access offering that IPSPs receive.

However, the PSR outlined some concerns regarding issues that limit competition and innovation in the provision of payment services. Whilst IPSPs did have a wider choice of access options, the PSR noted that many small non-agency payment service providers have limited or no choice of indirect access to payment systems. The PSR also recognized a number of quality-related issues with indirect access for all categories of IPSPs, and a number of barriers to switching IAPs. The PSR attributed many of these concerns to certain industry responses to financial crime regulation, lack of entry of new IAPs and the increase in demand for real-time payments. The PSR commented on their progress and approach to addressing such concerns.

The PSR has an ongoing program of policy work that is aimed at creating more open and proportionate direct access to payment systems, making direct access a viable option for a greater number of participants and increasing the level of choice for payment service providers. The PSR is also monitoring a number of businesses planning to become IAPs, it will continue to monitor and support their progress as part of its approach to increase market entry and expansion of IAPs. The PSR plans to publish a report on its progress towards addressing the concerns outlined in its market review early in 2017.

The final report is available at: https://www.psr.org.uk/sites/default/files/media/PDF/MR1513-indirect-access-market-review-final-report.pdf.

Financial Stability Board Progress Report on Action Plan to Address Decline in Correspondent Banking

On August 25, 2016, the FSB published a progress report for the G20 on its action plan to assess and address the decline in correspondent banking. Correspondent banking relationships enable banks to access financial services in different jurisdictions and provide cross-border payment services to their customers. The FSB comments that the international community are concerned by the decline in the number of correspondent banking relationships because the ability to send and receive international payments could be impacted and have repercussions on the growth, financial inclusivity, stability and integrity of the financial system. The report notes the progress made on the FSB's four point action plan that was established in November 2015. The first element of this is further examination of the dimensions and implications of the decline in correspondent banking. Second is clarifying regulatory expectations, including more guidance by the Financial Action Task Force. Third is domestic capacity-building in jurisdictions that are home to affected respondent banks. Fourth is the strengthening of tools for due diligence by correspondent banks. In the report, the FSB highlights several steps that have been taken by various bodies (including the CPMI, IMF and FATF) to implement the action plan. The FSB aims to publish a more comprehensive report by year end 2016.

The progress report is available at: http://www.fsb.org/wp-content/uploads/Correspondent-Banking-progress-report.pdf.

Recovery & Resolution

US Office of the Comptroller of the Currency Proposes Mandatory Stay-and-Transfer Provisions Requirements for Certain Qualified Financial Contracts

On August 19, 2016, the OCC issued a notice of proposed rulemaking that would require OCC-supervised subsidiaries, branches and agencies of US and foreign global systemically important banking organizations to amend certain qualified financial contracts to prohibit the immediate termination of such contracts and the exercise of certain other default rights by counterparties if the firm enters bankruptcy or a special resolution proceeding. Covered QFCs are defined to include swaps, derivatives, repurchase, reverse repurchase and securities lending and borrowing transactions. Under the proposed rule, any covered QFC would be required to include a contractual stay-and-transfer provision analogous to the stay-and-transfer provision provided for in Title II of the Dodd-Frank Act that supports the orderly resolution of financial firms in their contracts. Moreover, the proposed rule would also limit the default rights of a counterparty in the event of the insolvency of the G-SIB or its affiliates. Comments must be submitted to the OCC by October 18, 2016.

The proposed rule is largely analogous to a proposed rule issued by the Federal Reserve Board on May 3, 2016 and provides a substantively parallel rule for OCC-regulated institutions within a G-SIB group.

The notice of proposed rulemaking is available at: https://www.federalregister.gov/articles/2016/08/19/2016-19671/mandatory-contractual-stay-requirements-for-qualified-financial-contracts.

US Federal Banking Agencies Extend Deadline for Resolution Plan Submissions

On August 2, 2016, the US Federal Reserve Board and the FDIC announced that for 38 firms, the deadlines to submit resolution plans will be extended from December 31, 2016 to December 31, 2017. The firms include 36 domestic bank holding companies and foreign banking organizations, as well as two nonbank financial companies designated by the Financial Stability Oversight Council. The agencies expect to provide feedback on the firms' December 2015 plans for use in their December 2017 submissions. This extension will allow the firms additional time to incorporate feedback and guidance into their next plan submissions.

The list of firms subject to the extension is available at:
https://www.federalreserve.gov/newsevents/press/bcreg/bcreg20160802a1.pdf.

US Federal Reserve Board Vice Chairman Fischer Responds to Criticisms of the Dodd-Frank Act's Orderly Liquidation Authority and the Federal Reserve Board's Total Loss-Absorbing Capacity Proposal

On June 22, 2016, as part of his remarks at the Riksbank Macroprudential Conference in Stockholm, US Federal Reserve Board Vice Chairman Stanley Fischer responded to criticisms of the Dodd-Frank Act's orderly liquidation authority and the Federal Reserve Board's proposed total loss-absorbing capacity, or TLAC, requirement.

The proposed TLAC requirement mandates that systemically important firms maintain a minimum level of long-term, outstanding debt that could be used to absorb losses and recapitalize the firm in an orderly resolution under either the Bankruptcy Code or the orderly liquidation authority.

In his remarks, Fischer addressed the three most common criticisms of the TLAC proposal, starting with whether TLAC is a redundant backup OLA because the Bankruptcy Code provides an adequate framework for the resolution of any financial company. He also assessed whether OLA provides for a taxpayer bailout of systemically important funds through the orderly liquidation fund, concluding that it does not since OLA allows for liquidity support, and that any losses incurred by the fund would be covered by assessments imposed on large financial firms. Finally, he set forth reasons why TLAC requirements should not lead to GSIBs increasing their leverage and thereby their probability of failure.

Vice Chairman Fischer's speech is available at: http://www.federalreserve.gov/newsevents/speech/fischer20160622a.pdf.

US Senators Urge Federal Reserve Board and Federal Deposit Insurance Corporation to Use Statutory Tools Congress Has Provided Where Resolution Plans Are Found Not Credible

On June 20, 2016, US Senators Elizabeth Warren (D-Mass.) and Joe Donnelly (D-Ind.) sent a letter to the Federal Reserve Board and the FDIC encouraging the agencies to use "all statutory tools at their disposal" if banks' resolution plans, also known as living wills, are found not credible. The Senators expressed concern that, eight years after the financial crisis, and "after a multi-year review process, the living wills of five large banks reveal that the banks are still too vulnerable to weather a major economic storm without threatening the economy." The Senators further noted that Section 165 of the Dodd-Frank Act provides the Federal Reserve Board and the FDIC "the authority to impose more stringent prudential requirements on, or even ultimately restructure, large financial institutions unable to craft credible resolution plans on their own."

Earlier this year, the Federal Reserve Board and the FDIC jointly determined that five large financial institutions had submitted living wills that were not credible. The agencies have required those five firms to address the deficiencies and submit revised plans by October 1 of this year.

The text of the letter is available at: http://www.warren.senate.gov/?p=press_release&id=1162.

EU Final Legislation on Requirements for Firms to Hold Information on Financial Contracts

On September 24, 2016, a Commission Delegated Regulation outlining Regulatory Technical Standards specifying the information on financial contracts that a firm may be required to maintain was published in the Official Journal of the European Union. The Bank Recovery and Resolution Directive gives resolution authorities the power temporarily to suspend the termination rights of any counterparty to a contract with a firm that is under resolution. Both national regulators and resolution authorities may require a firm to maintain detailed records of financial contracts (generally, these are securities contracts, commodities contracts, futures and forwards contracts, swap agreements and inter-bank borrowing agreements) including as to whether or not they include suspensory provisions.

The RTS set out the minimum set of information on financial contracts that should be included in the detailed records held by a firm, which includes information such as whether a contract includes contractual recognition of resolution powers, information on value and valuation, collateral, termination rights, maturity and netting arrangements. The RTS also prescribe the circumstances in which the requirement to hold such records should be imposed and take a wide approach by including all firms or entities that might be subject to resolution actions.

Firms must retain, on an ongoing basis, the minimum set of information outlined in the RTS for each financial contract in its records. If access to such information is requested by a regulator or resolution authority, the firm must make available and transmit such information within the timeframe set out in the request. A firm may apply to have a field excluded from the request by successfully demonstrating to the requesting regulator that the information field is not applicable to the financial contract in question.

Firms that would be placed into an insolvency procedure need not be subject to these requirements, but the RTS does not prohibit national regulators or resolution authorities from imposing similar requirements on such firms, or any other firms.

The EBA published its final draft RTS in December 2015 and the final RTS are not substantively different from the final draft RTS. The RTS will be directly applicable across the EU from October 14, 2016.

The Regulation is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1712&from=EN.

Final EU Technical Standards on Minimum Requirement for Own Funds and Eligible Liabilities

On September 3, 2016, a Commission Delegated Regulation in the form of RTS on the methodology for setting minimum requirement for own funds and eligible liabilities was published in the Official Journal of the European Union. MREL is the European equivalent of US TLAC. MREL will be set by resolution authorities for each firm so that resolution plans are effective and will be linked to the capital requirements of a firm. The Commission adopted the RTS in May 2016, amending the final draft RTS submitted by the EBA in 2015. The EBA agreed with some but not all of the Commission's changes. For example, the EBA agreed that the RTS should not set a minimum contribution to loss absorption and recapitalization of 8% of total liabilities and own funds for systemic institutions, but proposed that the RTS should require resolution authorities to assess whether the burden-sharing requirements set out in the BRRD would be met. The final RTS entered into force on September 26, 2016.

The RTS is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1450&from=EN.

Final EU Technical Standards on the Valuation of Derivatives for Bail-in Published

On August 23, 2016, a Commission Delegated Regulation on the valuation of derivatives for the purpose of bailing-in derivative liabilities in the form of RTS was published in the Official Journal of the European Union. The final RTS do not differ substantively from the RTS adopted by the European Commission on May 23, 2016. The BRRD provides that a resolution authority may bail-in relevant derivative liabilities provided that the authority complies with certain conditions, including exercising the bail-in power only upon or after closing out the derivatives and ensuring that derivatives subject to a netting agreement are bailed-in on a net basis following the terms of the netting agreement. Before exercising the bail-in power, a resolution authority is required to ensure that an independent valuation of the assets and liabilities of a firm is carried out. For derivative liabilities, the valuation will determine the value of those derivative liabilities at the moment of exercise of the resolution power. The RTS provide a methodology for resolution authorities to follow when comparing the destruction in value that would arise from the close-out with the losses that those derivatives would incur in a bail-in, principles for determining the point in time at which the value of a derivative should be established and measures for establishing the value of classes of derivatives. The RTS entered into force on September 12, 2016.

The RTS on the Valuation of Derivatives for Bail-In is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1401&from=EN.

Final EU Technical Standards on Business Reorganization Plan Requirements Following Bail-In

On August 23, 2016, a Commission Delegated Regulation outlining the RTS on the elements of a business reorganization plan and the minimum contents for reporting progress in the implementation of the plan was published in the Official Journal of the European Union. The final RTS do not differ substantively from the RTS adopted by the European Commission on May 10, 2016. The final RTS supplement the requirements set out in the BRRD, which require a firm that has been bailed-in to submit a plan to the resolution authority on how the firm, or parts of it, might be restored to long-term viability within a reasonable timescale.

The RTS require a business reorganization plan to set out the firm's strategy for restoring viability, the projected financial performance of the firm, how it meets its prudential regulatory requirements on a going-forward basis and quarterly implementation milestones and performance indicators. The business reorganization plan must also include information that will allow the national regulator and resolution authority to conduct a viability assessment of the proposed strategy for restoration.

The BRRD also requires firms to submit progress reports to the resolution authority and national regulator on the implementation of the plan. The RTS set out the required contents of a progress report. The report should outline the milestones that have been met, the measures that have been realized and the actual impact of the measures taken compared with those that were envisaged. In addition, it must provide a comparison of the actual performance of the institution against the forecast in the business reorganization plan. If the firm has failed to meet milestones or has been delayed in doing so, the report should include reasons and proposals to remedy shortfalls. The report should also refer to any issues arising in the execution of the plan that may prevent restoration to long-term viability, upcoming measures and milestones and, if necessary, proposals for adjustments to milestones or performance indicators. The RTS entered into force on September 12, 2016.

The RTS on business reorganization plans is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1400&from=EN.

European Banking Authority Consults on Changing the Basis for the Level of Resolution Financing Arrangements

On July 25, 2016, the EBA launched a consultation on the appropriate reference point for setting the target level of resolution financing arrangements required by the BRRD. The BRRD provides that when a bank fails, shareholders and creditors of the bank must be the first to bear losses. To ensure the effective implementation of the other resolution tools available, member states are required to have pre-funded resolution financing arrangements, contributions of which are made by the banks in each Member State. The BRRD currently provides for contributions of at least 1% of the amount of covered deposits of all the banks in a given Member State by December 31, 2024. The BRRD requires the EBA to make recommendations to the Commission on whether the basis for those arrangements should be changed. The EBA is seeking feedback on its proposal to recommend to the Commission that the basis should be changed to one of: (i) total liabilities (excluding own funds) less covered deposits; (ii) total liabilities (excluding own funds); or (iii) total liabilities (including own funds).

The consultation closed on September 2, 2016. The EBA must submit its report to the Commission by October 31, 2016. The Commission will assess the report and decide whether to submit a legislative proposal for changing the basis for the target level for resolution financing arrangements under the BRRD.

The consultation paper is available at: http://www.eba.europa.eu/documents/10180/1529894/EBA-CP-2016-08+CP+on++Resolution+Financing+Arrangements.pdf.

EU Technical Standards Under the Bank Recovery and Resolution Directive Come into Force

On July 8, 2016, a Delegated Regulation supplementing the BRRD, in the form of RTS was published in the Official Journal of the European Union. The RTS specifies, amongst other things: the content of recovery plans, resolution plans and group resolution plans; the minimum criteria that resolution authorities will assess regarding recovery plans and group recovery plans; the conditions for group financial support; the requirements for independent valuers; the contractual recognition of write-down and conversion powers; and the procedures and contents of notification requirements and of notice of suspension and the operational functioning of the resolution colleges. The RTS entered into force on July 28, 2016.

The RTS is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.184.01.0001.01.ENG&toc=OJ:L:2016:184:TOC.

EU Technical Standards on Information Banks to Provide to Resolution Authorities for Resolution Plans

On July 6, 2016, a Commission Implementing Regulation setting out the ITS on the provision of information to national resolution authorities for the purpose of developing resolution plans was published in the Official Journal of the European Union. The BRRD provides that resolution authorities must prepare a resolution plan for each bank and empowers resolution authorities to require firms to provide information for that purpose. The ITS set out the procedure for the provision of that information, as well as the templates to be used which will capture the minimum set of information required, including, for example, organizational structure, critical counterparties and pledged collateral. The ITS entered into force on July 26, 2016.

The ITS on provision of information for resolution plans is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.181.01.0001.01.ENG&toc=OJ:L:2016:181:TOC.

European Banking Authority Assesses Governance and Indicators in EU Recovery Plans

On July 5, 2016, the EBA published a comparative report on recovery plan governance and indicators. Banks and certain large investment firms are required by the BRRD to prepare recovery plans and to submit them to their national regulator. The national regulator must assess the credibility of the recovery plans. The BRRD requires firms to include appropriate conditions and procedures for the timely implementation of any recovery actions and a framework of indicators that identify the points at which certain recovery actions may be taken. The EBA compared the recovery plans of 26 European cross-border banking groups with parent firms located across 12 EU countries. The aim of the analysis is to assess how firms are implementing the requirements of the BRRD as well as draft technical standards on the content of recovery plans and EBA Guidelines on recovery indicators and to consider the credibility and effectiveness of governance arrangements across the sample banks. The EBA hopes that the analysis will assist regulators in their assessments of recovery plans, in particular, in identifying crucial elements to be considered by institutions when designing credible governance arrangements and effective indicator frameworks.

The EBA concludes that most firms have understood the importance of developing sound governance arrangements and also that indicators are key to promote the timely activation of a recovery plan. However, the EBA considers that improvements are possible. For governance arrangements, local management should be involved in developing and updating the group plan. Also, most plans need more detail on the steps taken to ensure coordination of actions at the group and local level. Further alignment is also needed of the procedures for escalation at the local and group level. For indicators, the EBA considers that the scope of indicators used should be broader (most firms only use capital and liquidity) to include asset quality, profitability, market-based indicators and macroeconomic indicators. Capital and liquidity indicators are often set at levels that are too low, which hinders timely activation of the relevant escalation procedures and recovery options. Finally, most plans do not include enough detail for indicators at the level of individual subsidiaries.

The report is available at:
http://www.eba.europa.eu/documents/10180/1360107/EBA+BS+2016+Comparative+report+on+RP+governance+and+indicators_July+2016.pdf.

Technical Standards on Reporting to the European Banking Authority Under the BRRD Published

On June 17, 2016, a Commission Implementing Regulation laying ITS under the BRRD was published in the Official Journal of the European Union. The ITS outline the uniform forms, templates and definitions for the identification and transmission of information by regulators and resolution authorities to the EBA. The BRRD outlines obligations for regulators and resolution authorities on the application of simplified obligations for the contents and details of recovery plans, the date by which the first recovery plans are to be drawn up and the frequency for updating the recovery plans.

Regulators and resolution authorities reporting information to the EBA must use the templates provided, which include criteria such as total assets, total exposure at default, total assets/member state's gross domestic product, total risk-weighted assets and total liabilities. Regulators are to complete the relevant parts of the templates for the purposes of recovery planning and resolution authorities do so for the purposes of resolvability assessment and resolution planning. Regulators must also disclose the number and total assets of firms for which simplified obligations have been applied under the BRRD for the purposes of recovery planning, as compared to the number and total assets of firms, respectively, established in the Member State concerned.

Information to be submitted by regulators and resolution authorities includes the number of credit institutions and the number of investment firms established in the member state, and the number and total assets of institutions to which a waiver has been granted under the BRRD with regard to recovery and resolution planning. Regulators must also disclose the number and total assets of firms for which simplified obligations have been applied under the BRRD for the purposes of recovery planning as compared to the number and total assets of firms, respectively, established in the Member State concerned.

The first reporting period for this information commenced on January 1, 2015, and ended on April 30, 2016. Information for that period must be submitted to the EBA by August 12, 2016. The second reporting period commenced on May 1, 2016 and will end on April 30, 2017. Information relating to the second period must be submitted to the EBA by June 1, 2017. The ITS entered into force on July 12, 2016.

The ITS is available at: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.160.01.0035.01.ENG&toc=OJ:L:2016:160:TOC.

UK Prudential Regulator Policy Statement on Operational Continuity in Resolution

On July 7, 2016, the PRA published a Policy Statement on operational continuity in resolution. The Appendices to the Policy Statement set out a final Supervisory Statement and the PRA Rulebook: CRR Firms: Operational Continuity Instrument 2016. The Policy Statement provides feedback to responses to the PRA consultation on this topic in December 2015. Based on responses received, the PRA concluded that no significant changes were required to its proposals. The Supervisory Statement sets out its expectations of firms to ensure operational continuity of critical services to facilitate recovery actions, orderly resolution and post-resolution restructuring. Compared to the draft Supervisory Statement, the PRA has amended the financial resilience expectations by removing the capital expectation and stating that the Bank of England will consider whether a loss absorbing capacity should be allocated within groups to ensure operational continuity as part of the MREL regime.

The Operational Continuity Instrument 2016 sets out the final text of the new Operational Continuity Part of the PRA Rulebook and will come into effect on January 1, 2019.

The Policy Statement is available at: http://www.bankofengland.co.uk/pra/Documents/publications/ps/2016/ps2116.pdf, the Supervisory Statement is available at: http://www.bankofengland.co.uk/pra/Documents/publications/ss/2016/ss916.pdf and the Operational Continuity Instrument 2016 is available at: http://www.bankofengland.co.uk/pra/Documents/publications/ps/2016/ps2116app2.pdf.

UK Regulator Amends Rules on Contractual Recognition of Bail-in

On June 29, 2016, the PRA published final amendments to its rules on the contractual recognition of bail-in. The BRRD requires EU banks and certain investment firms to include clauses in certain contracts governed by non-EU law by which the creditor agrees to recognize that the liability may be bailed in by the national resolution authority. In November 2015, the PRA issued a Modification by Consent which disapplied the requirement for unsecured liabilities that are not debt securities (known as "phase 2 liabilities") where compliance would be impracticable until June 30, 2016. The PRA published its final rules and extended the Modification by Consent until July 31, 2016. The amended rules applied from August 1, 2016. The PRA also published a Supervisory Statement which provides guidance on the meaning of the term "impracticable" by providing a list of non-exhaustive examples of impracticability such as it is illegal in the third country to include contractual recognition language in agreements or instruments creating liabilities governed by the laws of that third country and the creation of liabilities is governed by international protocols which the firm has no power to amend. The onus will be on firms to demonstrate that compliance with the contractual recognition requirement would be impracticable.

The amended rules, final Policy Statement and Supervisory Statement are available at: http://www.bankofengland.co.uk/pra/Pages/publications/ps/2016/ps1716.aspx.

Financial Stability Board Published Further Guidance on Resolution Planning

On August 18, 2016, the FSB published a final guidance paper on arrangements to support operational continuity in resolution, guiding principles on temporary funding needed to support orderly resolution of G-SIBs, and its fifth report to the G20 on progress in resolution. The purpose of the guiding principles is to address the risk of banks having insufficient liquidity to maintain critical operations during a resolution. The aim of the final guidance is to assist supervisory and resolution authorities and firms to evaluate whether firms that are subject to resolution planning requirements have appropriate arrangements to support operational continuity should they enter resolution. The final guidance complements the FSB's Key Attributes of Effective Resolution Regimes for Financial Institutions, which provide a policy framework for the resolution of systemically important firms. Operational continuity relates to the ability to continue critical shared services that are necessary to maintain the provision, or facilitate the orderly wind down, of a firm's critical function in resolution. The guidance identifies a number of arrangements including specific contractual provisions, access arrangements and governance structures to support operational continuity in resolution for three service models: (i) service provision within a regulated entity; (ii) service provision by an intra-group service company; and (iii) service provision by a third party service provider. The report to the G20 outlines the progress of the FSB's ongoing work on resolution and implementation of the FSB's Key Attributes of effective resolution regimes for financial institutions and ensuring that all global systemically important financial institutions are resolvable. The report concludes that while development of policies to address the risks posed by the too-big-to-fail banks is largely complete, more work is still necessary to implement those policies.

The guidance temporary funding is available at: http://www.fsb.org/wp-content/uploads/Guiding-principles-on-the-temporary-funding-needed-to-support-the-orderly-resolution-of-a-global-systemically-important-bank-%E2%80%9CG-SIB%E2%80%9D.pdf, the guidance on arrangement to support operational continuity is available at: http://www.fsb.org/wp-content/uploads/Guidance-on-Arrangements-to-Support-Operational-Continuity-in-Resolution1.pdf and the G20 report is available at: http://www.fsb.org/wp-content/uploads/Resilience-through-resolvability-%E2%80%93-moving-from-policy-design-to-implementation.pdf.

Securities

US Securities and Exchange Commission Proposes Amendments to Require Hyperlinks to Exhibits in Filings

On August 31, 2016, the SEC proposed rule and form amendments that would require certain registrants to include a hyperlink to exhibits in their filings, thereby making it easier to locate documents attached to company filings. The proposed amendments would require registrants that file registration statements and periodic and current reports that are subject to the exhibit requirements under Item 601 of Regulation S-K, or that file on Forms F-10 or 20-F, to include a hyperlink to each exhibit listed in the exhibit index of the filings. The public comment period will remain open for 45 days following publication in the Federal Register.

The proposed rule is available at: http://www.sec.gov/rules/proposed/2016/33-10201.pdf.

US Securities and Exchange Commission Adopts Amendments Providing Authorities Access to Data Obtained by Security-Based Swap Data Repositories

On August 29, 2016, the SEC adopted amendments to a rule that requires security-based swap data repositories to make data available to regulators and other authorities, allowing them to share information and more effectively oversee the security-based swap market.

The Dodd-Frank Act establishes provisions for regulators to access security-based swap data from data repositories. Building on a proposal from September 2015, the final rule amendments implement these provisions and, among other things: (i) require either a memorandum of understanding or other arrangement between the SEC and the recipient of the data to address the confidentiality of the security-based swap data provided to the recipient; (ii) identify the five prudential regulators named in the statute, as well as the Federal Reserve banks and the Office of Financial Research, as being eligible to access data; and (iii) address factors that the SEC may consider in determining whether to permit other entities to access data.

The final rule is available at: http://www.sec.gov/rules/final/2016/34-78716.pdf.

US Securities and Exchange Commission Invites Comments on Regulation S-K Disclosure Requirements

On August 25, 2016, the SEC issued a request for comment on Subpart 400 of Regulation S-K, which requires certain disclosures about management, certain security holders and corporate governance of the disclosing firm. The request is part of a broader initiative to improve the disclosure requirements of Regulation S-K. The review will also inform the study mandated by the Fixing America's Surface Transportation Act which requires the SEC to study Regulation S-K requirements in order to best modernize and simplify the substance of the disclosure requirements as well as the manner of the presentation of disclosed information. Input may include comments on existing requirements as well as potential disclosure issues that commenters believe Regulation S-K should address. The comment period is open for 60 days after the publication of the release in the Federal Register.

The SEC's request for comment is available at https://www.sec.gov/rules/other/2016/33-10198.pdf.

US Securities and Exchange Commission Amends Investment Advisers Act Rules and Forms

On August 25, 2016, the SEC published a final rule adopting amendments to Form ADV and several rules under the Investment Advisers Act of 1940 aimed at enhancing disclosure of information by investment advisers. The amendments will require investment advisers to provide additional information about various aspects of their businesses, including separately managed account business, branch operations, and their use of social media. The amendments will also facilitate streamlined registration and reporting by groups of funds and require advisers to maintain additional records related to adviser performance information. The amendments will become effective 60 days after their publication in the Federal Register, and advisers will be required to comply with the amended rules on October 1, 2017.

The SEC's final rule is available at: https://www.sec.gov/rules/final/2016/ia-4509.pdf.

US Securities and Exchange Commission Amends Rules Related to Security-Based Swap Transaction Reporting

On July 13, 2016, the SEC adopted a series of amendments and related guidance regarding Regulation SBSR, which governs the regulatory reporting and public dissemination of security-based swap transactions. The amendments, among other things, assign reporting duties for platform-executed security-based swaps submitted for clearing and those resulting from the clearing process, establish reporting and publication requirements for certain cross-border security-based swaps, and prohibit swap data repositories from imposing fees or usage restrictions on data that Regulation SBSR requires be made public. The goal of the amendments and guidance is to increase transparency in the security-based swap market by facilitating better public access to transaction information and expanding the scope of Regulation SBSR to cover additional transactions and entities. The amendments and guidance will be effective on October 11, 2016. The rules and guidance also establish a compliance schedule for portions of Regulation SBSR, providing that transaction reporting will not begin until after security-based swap dealers and major security-based swap participants have registered with the SEC.

The final rule is available at: https://www.federalregister.gov/articles/2016/08/12/2016-17032/regulation-sbsr-reporting-and-dissemination-of-security-based-swap-information#h-4.

US Securities and Exchange Commission Proposes Amendments to Update and Simplify Disclosure Requirements

On July 13, 2016, the SEC proposed amendments to eliminate redundant, overlapping, outdated or superseded provisions of its rules, in light of subsequent changes to public disclosure requirements, accounting standards and technology. The amendments, along with comments received on a release seeking information to simplify and improve disclosure requirements under Regulation S-K, are designed to further inform the Commission's actions to enhance disclosure effectiveness and efficiency. The SEC is also seeking comment on certain disclosure requirements that overlap with US Generally Accepted Accounting Principles (GAAP) to determine whether to retain them or refer them to the Financial Accounting Standards Board for incorporation into GAAP. The proposed amendments are part of a broader staff review of the disclosure requirements that issuers are required to make to investors and the requirements of the Fixing America's Surface Transportation Act (FAST) to eliminate provisions of Regulation S-K that are duplicative, overlapping, or unnecessary. There will be a 60-day comment period.

The SEC's proposed amendments are available at: https://www.sec.gov/news/pressrelease/2016-141.html.

US Securities and Exchange Commission Proposes Requiring Investment Advisers to Adopt Business Continuity and Transition Plans

On June 28, 2016, the SEC proposed a rule that would require registered investment advisers to adopt and implement written business continuity and transition plans. The new rule requires investment advisers to prepare in advance for significant disruptions in their operations—whether temporary or permanent (such as a natural disaster, cyber-attack, technology failures, etc.)—thereby mitigating client and investor harm.

The proposed rule would require an adviser's plan to be based on the particular risks associated with its operations, but also include policies and procedures addressing specified components, such as the maintenance of systems and protection of data, pre-arranged alternative physical locations, communication plans and review of third-party service providers. The rule would allow advisers to tailor the detail of their plans to the complexity of their business operations.

SEC Chair Mary Jo White commented that this rule was "the latest action in the Commission's efforts to modernize and enhance regulatory safeguards for the asset management industry." In addition to the proposed rule, the SEC staff issued related guidance addressing business continuity planning for registered investment companies, including oversight of operational capabilities of key fund service providers.

The SEC press release is available at: http://www.sec.gov/news/pressrelease/2016-133.html.

The proposed rule is available at: https://www.sec.gov/rules/proposed/2016/ia-4439.pdf and SEC staff guidance is available at: http://www.sec.gov/investment/im-guidance-2016-04.pdf.

US Securities and Exchange Commission Proposes Amendments to Smaller Reporting Company Definition

On June 27, 2016, the SEC voted to propose amendments that would increase the financial thresholds in the "smaller reporting company" definition. By expanding the number of companies that qualify as smaller reporting companies, the proposal is intended to "promote capital formation and reduce compliance costs for smaller companies" according to SEC Chairman Mary Jo White. Smaller reporting companies may qualify for scaled disclosures provided in Regulations S-K and Regulations S-X.

The proposed rules would enable a company with less than $250 million of public float to provide scaled disclosure as a smaller reporting company, as compared to the $75 million threshold under the current definition. If a company does not have a public float, it would be permitted to provide scaled disclosures if its annual revenues are less than $100 million, as compared to the current threshold of less than $50 million in annual revenues.

It is important to note, however, that the SEC is not proposing to increase the $75 million threshold in the "accelerated filer" definition. As a result, smaller reporting companies with $75 million or more of public float will be subject to accelerated filer requirements.

The SEC press release is available at: http://www.sec.gov/news/pressrelease/2016-131.html and the proposed rule is available at: https://www.sec.gov/rules/proposed/2016/33-10107.pdf.

US Federal Deposit Insurance Corporation Approves Final Rule to Revise the Securitization Safe Harbor Rule

On June 21, 2016, the FDIC released a final rule revising the Securitization Safe Harbor Rule (12 C.F.R. Part 360.6) to clarify that its requirement that servicers of securitized assets take loss mitigation action within 90 days after an asset becomes delinquent does not conflict with the Consumer Financial Protection Bureau's Regulation X (12 C.F.R. Part 1024), which prohibits a mortgage loan servicer from initiating foreclosure notices or filings unless a mortgage loan is more than 120 days delinquent. Specifically, the Securitization Safe Harbor Rule is being revised to clarify that documents governing a securitization transaction need not require the servicer of securitized assets to take any action that would be prohibited by Regulation X in order to satisfy the 90-day loss mitigation requirement of the securitization safe harbor. The final rule is effective July 27, 2016.

The FDIC final rule is available at: https://www.fdic.gov/news/board/2016/2016-06-21_notice_sum_e_fr.pdf.

Shadow Banking

US Federal Reserve Board Governor Daniel Tarullo Discusses Shadow Banking Regulation

On July 12, 2016, US Federal Reserve Board Governor Daniel Tarullo discussed the risks of shadow banking activities at the Center for American Progress and Americans for Financial Reform Conference. He focused his remarks on the characteristics of shadow banking-related financial activities and institutions that are most likely to pose risks to financial stability, namely the risk of "runnable liabilities," defined as short-term, "pay-on-demand" transactions that are not insured by the federal government. These transactions are thought to pose a severe risk to financial stability since their pay-on-demand feature implies that, in the event of stress caused by credit-risk concerns, wide swings in short-term interest rates, or deteriorations in market liquidity, investors may behave as they would during times of stress and redeem shares, unwind transactions or decide not to roll over positions. Tarullo stated that this type of runnable funding, while less prevalent than before the financial crisis, is a key area for prudential regulators to focus analysis and policy initiatives. He stressed that while liquidity standards, stress testing and resolution planning exist to help curb the risk of runnable funding for prudentially regulated firms, liquidity runs that could threaten financial stability may exist in the non-regulated sector. Governor Tarullo suggested a number of key issues to be considered in creating a regulatory framework for these transactions, including whether one versus multiple agencies should regulate the industry and whether or not regulation should be uniform or should be tailored to take into account the characteristics of the market actors and business models involved in the funding relationship.

Governor Tarullo's speech on shadow banking is available at:
https://www.federalreserve.gov/newsevents/speech/tarullo20160712a.htm

Financial Stability Board Proposes Recommendations to Address Structural Vulnerabilities from Asset Management Activities

On June 22, 2016, the FSB launched a consultation on proposed Policy Recommendations to Address Structural Vulnerabilities from Asset Management Activities. The FSB recommendations aim to address four structural vulnerabilities from asset management activities that could cause financial stability risks. Those vulnerabilities are: (i) liquidity transformation by investment funds; (ii) leverage within funds; (iii) operational risk and challenges in transferring investment mandates in stressed conditions; and (iv) securities lending activities of asset managers and funds. The FSB makes 14 recommendations and seeks feedback on the proposals by September 21, 2016. The FSB intends to finalize the recommendations by the end of 2016.

The consultation paper is available at: http://www.fsb.org/wp-content/uploads/FSB-Asset-Management-Consultative-Document.pdf.

People

Alberto Musalem to Resign from Federal Reserve Bank of New York

On September 14, 2016, the Federal Reserve Bank of New York announced that Alberto G. Musalem, executive vice president and head of the Integrated Policy Analysis Group (IPA), will resign from the New York Fed effective January 6, 2017. On October 1, 2016, Mr. Musalem will assume the role of senior advisor to the president of the New York Fed, William C. Dudley.

A successor for Mr. Musalem will not be named. The work of IPA will continue, but as of October 1, 2016, its responsibilities and staff will be reassigned to the Markets, Research and Statistics, and Supervision Groups, as well as to the Executive Office.

The New York Fed press release is available at: https://www.newyorkfed.org/newsevents/news/aboutthefed/2016/oa160914.

Federal Reserve Bank of New York Names Michael Held Executive Vice President and General Counsel

On August 12, 2016, the Federal Reserve Bank of New York named Michael Held executive vice president, head of the Legal Group and general counsel, effective August 15, 2016. He will also serve on the New York Fed's Management Committee. As head of the Legal Group, Mr. Held will oversee the day-to-day operations of the group, which include Legal, Bank Applications, Compliance, the Corporate Secretary's Office, Federal Reserve Law Enforcement Unit and Records Management.

The New York Fed press release is available at: https://www.newyorkfed.org/newsevents/news/aboutthefed/2016/oa160812.

US Office of the Comptroller of the Currency Names Peggy Sherry Deputy Chief Financial Officer

On August 3, 2016, the OCC announced the selection of Peggy Sherry to be the agency's Deputy Chief Financial Officer. In this role, Sherry will oversee the planning and execution of the agency's annual operating budget and will be responsible for the oversight of the OCC's financial systems, internal and financial controls program, travel policy and operations and agency records management functions as well as the OCC's Office of Management's compliance and strategic planning functions. She assumes these duties in September, succeeding Gary Crane, who is retiring.

The OCC press release is available at: http://www.occ.gov/news-issuances/news-releases/2016/nr-occ-2016-92.html.

Federal Reserve Bank of New York Announces Appointment of Denise Scott to Board of Directors

On July 29, 2016, the Federal Reserve Bank of New York announced that Denise Scott, executive vice president for programs at the Local Initiatives Support Corporation (LISC), has been appointed a Class C director of the New York Fed by the Federal Reserve Board. Starting August 1st, Scott will be filling the remainder of Dr. Marc Tessier-Lavigne's term, which expires on December 31, 2016. Scott will be eligible for reappointment at that time.

The New York Fed press release is available at: https://www.newyorkfed.org/newsevents/news/aboutthefed/2016/oa160728.

Consumer Financial Protection Bureau Announces Changes to Senior Leadership

On July 20, 2016, the CFPB announced that Chris D'Angelo was appointed to serve as the CFPB's Associate Director for Supervision, Enforcement and Fair Lending, Nellisha Ramdass was appointed to serve as the CFPB's Deputy Chief Operating Officer and Richard Lepley was appointed to serve as the CFPB's Principal Deputy General Counsel in the Office of the General Counsel in the CFPB's Legal Division.

The CFPB press release is available at: http://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-announces-changes-senior-leadership/.

Beverly F. Cole Named Deputy Comptroller for Compliance Supervision

On June 22, 2016, the OCC announced that Beverly F. Cole will become its Deputy Comptroller for Compliance Supervision. In this new role, Ms. Cole will serve as the operational executive responsible for developing and promulgating compliance operational protocols, examination strategies and schedules. She will oversee a staff implementing bank supervision policy for compliance and establish programs to ensure efficient bank supervision for compliance. She will report to the Senior Deputy Comptroller for Compliance and Community Affairs. She took on these duties in July 2016.

The OCC press release is available at: http://www.occ.gov/news-issuances/news-releases/2016/nr-occ-2016-72.html.

European Commission Establishes Brexit Negotiation Task Force for UK Exit Negotiations

On September 14, 2016, the European Commission established a task force to prepare and conduct negotiations with the United Kingdom. The Task Force will assist the Commission on all strategic, operational, legal and financial issues related to the negotiations. Sabine Weyand, currently Deputy Director-General in the Commission's trade department (DG TRADE) will become the Deputy Chief Negotiator as of October 1, 2016. The announcement follows the appointment of Michel Barnier as

Chief Negotiator on July 27, 2016. Mr. Barnier will commence his role from October 1, 2016. The Commission noted that once the UK triggers the process to leave the EU, Mr. Barnier will then make the necessary contacts with the UK authorities.

The press release is available at: http://europa.eu/rapid/press-release_IP-16-3016_en.htm.

You might like to view our Brexit resource page, which is available here: http://www.shearman.com/en/services/key-issues/brexit-resource-center.

Bank of England Deputy Governor for Markets and Banking to Leave the Bank

On September 12, 2016, the Bank of England announced the departure of Minouche Shafik, Deputy Governor for Markets and Banking. Ms. Shafik will relinquish her position in February 2017, taking up the role of Director at the London School of Economics in September 2017. Ms. Shafik's successor has not yet been named.

The news release is available at: http://www.bankofengland.co.uk/publications/Documents/news/2016/067.pdf.

Appointment of New External Member to UK Financial Policy Committee

On September 1, 2016, Philip Hammond, Chancellor of the Exchequer, announced the appointment of Professor Anil Kashyap to the Bank of England's FPC as an external member. Mr. Kashyap's term on the FPC will begin on October 1, 2016 for a period of three years.

The announcement is available at: https://www.gov.uk/government/news/professor-anil-kashyap-appointed-to-the-financial-policy-committee.

Upcoming Events

October 3, 2016: EBA public hearing on proposed Guidelines on Bank's Credit Risk Management Practices and Accounting for Expected Losses

November 10, 2016: FCA Financial Crime Conference

November 21, 2016: EBA public hearing on proposed technical standards under the PAD (deadline for registration is October 25, 2016)

Upcoming Consultation Deadlines

September 29, 2016: EBA consultation on proposed Guidelines to implement the revised Pillar 3 framework

September 30, 2016: CPMI/IOSCO consultation on proposed guidance for a harmonized Unique Product Identifier

October 2, 2016: European Commission consultation on how the cross-border distribution of funds could be improved in the context of the Capital Markets Union

October 7, 2016: PRA consultation on Reporting and Prudential Requirements for Ring-Fenced Banks

October 12, 2016: EBA consultation on draft RTS on strong customer authentication and secure communication under the revised PSD

October 14, 2016: FMSB consultation on proposed standard on binary options for the commodities markets

October 17, 2016: IOSCO consultation on a proposed set of good practices on the voluntary termination of investment funds

October 21, 2016: Bank of England consultation on the proposed EDMC

October 26, 2016: EBA consultation on Connected Clients under the CRR

October 26, 2016: EBA consultation on proposed Guidelines on Bank's Credit Risk Management Practices and Accounting for Expected Losses

October 27, 2016: Comments to US FDIC proposed Guidance on Third-Party Lending

October 28, 2016: FCA consultation on implementation of MiFID II and proposed changes to the FCA Handbook

October 28, 2016: PRA consultation on proposed approach to implementation of the Systemic Risk Buffer

October 28, 2016: OECD working group consultation on draft guidelines for the liability of legal persons for foreign bribery

November 15, 2016: HM Treasury consultation on amending the definition of regulated advice

November 21, 2016: ESMA discussion paper on the trading obligation for derivatives under MiFIR

November 30, 2016: EBA consultation on minimum amount of professional indemnity insurance for authorization under the revised PSD

December 13, 2016: FCA consultation on proposed updates to the current appropriate qualification examination standards for financial advisers

December 22, 2016: EBA consultation on proposed draft technical standards supplementing the PAD

This newsletter is intended only as a general discussion of these issues. It should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired. If you wish to receive more information on the topics covered in this publication, you may contact your usual Shearman & Sterling representative or any of the following:

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